SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1974

DOCKET NO. 73 - 1753

APPELLANT'S PETITION FOR WRIT OF CERTIORARI, TO APPEAL FROM THE DECREE OF THE JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY

313 A. 2nd 435, (Me., 1974)

(Attorneys for Appellees)
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(Appellees)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
EDYTHE I. RICE DYER
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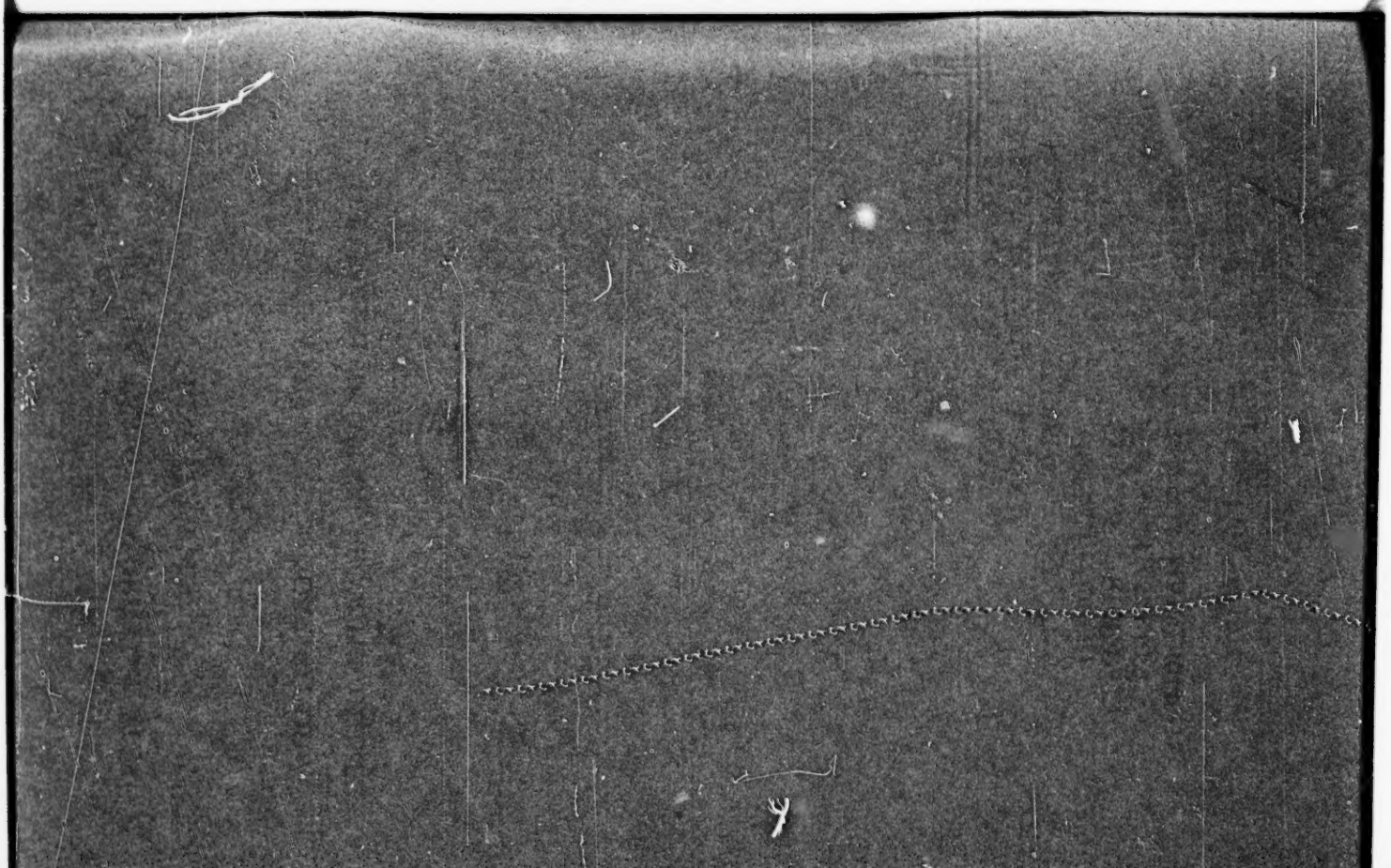
May 4th, 1974



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MOTION

Motion is made: — for leave to request an Extraordinary Writ (under U.S.C. Rule 30-31) to be issued by this Honorable Court, authorized under 28 U.S.C. 1651 or 28 U.S.C. 2241.

The Appellant seeks issuance of a Writ of Mandamous, because: —

> THIS CASE: — AND ALL "LEGAL" PROCESS, LAW, AND PROCEEDURE TO DATE: — IS SO TOTALLY VOID, — — — IT IS AN UNCONSTITUTIONAL "LEGAL" NULLITY. . . .
>
> (Quid ab initio)

The nature of the complaint is so fundamental: — so totally without a "LEGAL" Remedy; — — — or answer, — — — or Justice; (in the state courts) — that "HABEAS CORPUS", (" in PRINCIPAL") exists.

Under U.S.C. Rule 31, sections (2) — (3) — (5): — — —

> THAT WHICH IS OBVIOUSLY WRONG;——— IN THE BEGINNING; CAN NOT IMPROVE WITH TIME.

It is my understanding that this Honorable Court may, at its own discretion; WAIVE ITS OWN RULES.

Whereas this Honorable Court has previously denied certionari, re: this same situation, (371 U.S. 949) — (1963) — — — it seems in order to Appeal, or request a rehearing, or to re-open the case on the basis of Equity and NEW EVIDENCE recently admitted;

In Re: Estate of Cassidy 313 A. 2nd at page 439, — (1974)

(quote) *"This Court in Murray examined, discussed and determined the LEGAL EFFECT of what John Cassidy said.*
It could give no HEED to what be MIGHT or 'SHOULD' have said."

TO THIS ADMISSION, — I RESPECTFULLY SAY: "HABEAS CORPUS." If a man is in "jail"; — and a law court admits; "It could give NO HEED to what he might or SHOULD have said:

— — AND IT DID NOT ANSWER THE (quote) "LEGAL EFFECT" — — (AT THE TIME OF HIS TRIAL) THE PRACTICAL APPLICATION OF LAW REQUIRES THE "HABEAS CORPUS", EFFECT.

** IT IS NEVER TOO LATE
FOR JUSTICE TO BE DONE. **

It has been extremely difficult for me, pro se, to write this Appeal. Lawyers have only delayed me and declined to

become involved for fear of "admonishment".

Please see:—

Admonishment; without prejudice.

(313 A. 2nd at p. 439)

It has been IMPOSSIBLE to mechanically get this case timely printed, and organized in order to comply with this Honorable Court's rules.

Therefore I beg leave, (of a few days) to timely file.

In view of unusual hardship, may I proceed; — as a matter of law and principle. . . . . and equity.

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1974

DOCKET NO.

EDYTHE RICE DYER, APPELLANT (PRO SE)

RE: ESTATE OF JOHN CASSIDY

313 A. 2nd 435

APPEAL

TO

THE SUPREME COURT

of the UNITED STATES

TO:

THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Appellant respectfully requests leave to file, and that a writ of certiorari issue to review on appeal, the final decision of the Supreme Judicial Court of the State of Maine, as filed on Feb. 21, 1974.

OPINIONS BELOW

The Probate Court Decree, in regard to Edythe L. R. Dyer's Petition of October 16, 1969, County of Penobscot, State of Maine, appears in the certified Record of the case, at page #17. . . . (R. 17).

The Order of Superior Court, County of Penobscot, State of Maine, Docket #9423, was filed on October 6, 1972, re: the Appellant's Appeal, it appears in the certified Record of this case at page #322. . . . (R. 322).

The Opinion of the Supreme Judicial Court of Maine. (the Law Court) dated December 26, 1973, is reported as:

Re: Estate of John Cassidy
313 A. 2nd 435, (Me.) (1973)

A Motion for Review, of Errors of Law, and Supplementary Relief, — filed with the Supreme Judicial Court on January 15, 1974 — — was denied, and opinion filed

Febuary 21, 1974.

JURISDICTION

WHEREAS: — — — THE PETITIONER HEREIN IS SERIOUSLY AGRIEVED; THE "LEGAL" ISSUES HEREIN REQUIRE CONSTITUTIONAL SUPERVISION; — AND JUSTICE NEEDS TO BE DONE.

THIS APPEAL IS MADE, NOT TO PROLONG THE CASE, OR TO BE VINDICTIVE TOWARD ANYONE.

Jurisdiction is invoked under the United States Supreme Court Rule #19: 30-31

(A) "A state court has not decided a federal question", — in accord with applicable decisions of this court.

(B) "A court of appeals has "decided an important State statutory question in a way in conflict with APPLICABLE STATE LAW".

" — and has so far departed from the accepted and usual course of judicial proceedings —" . . .

THAT: — — —

As a citizen of the State of Maine, I have been constantly and continuously denied my LEGAL (and Civil Right) as a claimant of INTESTATE property; as provided under (quote) "the SAME MANNER" (quote) "provided by the laws of the State of Maine for the descent among LINEAL descendants of intestate property.

Murray vs. Sullivan
158 Me. at page 99
(my emphasis)

THIS LEGAL RIGHT CONTINUES: — —
As admitted in Murray (supra), at page #100; — — THE COURT SAID:

(quote) *"The applicable statute, incorporated by reference into the (Cassidy) will IS — R.S. 1954, Chap. 170, Sec. 1, Sub sec. II, which provides:*

(quote) *"The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation.*

If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not according to the right of representation."

(my emphasis)

*** THE MAINE LAW COURT HAS CREATED A "NEW" DEATH DATE; — FOR MR. CASSIDY, (43 years after he actually died) * *

*** The Law Court will not (quote) "PERMIT" — the statute to be applied; as required by the applicable statute: (158 Me. at p. 107)

THE WORDS, — OF THE STATUTE: —

(quote) — " — — *and to the issue of a ("pre") deceased child by RIGHT OF REPRESENTATION". — HAVE BEEN OMITTED.*

Note: I am the only child, of Mr. Cassidy's only child, who pre-deceased him with issue. Four of his (5) children directly survived him. — (no widow).

Under U.S.C. Rule #15, (E)

The appeal is from a state court and the grounds upon which this Motion is presented, contends that federal questions are substantial (Zucht vs. King, 260 U.S. 174-177). The nature of this case and the rulings of the state court are capricious, arbitrary, prejudicial, illegal, contrary to facts, and "LEGALLY" IMPOSSIBLE, under State and Federal Constitutions.

These contentions bring the case within the jurisdictional provisions (and civil rights of citizens) under Amendment XIV of the U.S. Constitution.

Under U.S.C. Rule #33, (B), I do say: — — —

(quote) *"Any proceeding in whatever court — — the constitutionality of any Act of Congress affecting the public interest is drawn in question — all initial pleadings, motions on papers in this court shall recite that 28 U.S.C. Sec. 2430, may be applicable, and shall be served upon the Solicitor General, Department of Justice, Washington, D.C. (20530)*

The issues herein have not been previously answered.

A VALID, FINAL PROBATE DECREE DOES NOT NOW EXIST . . .!

The exercise of this Honorable Court's power of SUPERVISION, is respectfully requested.

IT SHOULD NOT BE MY DUTY TO HAVE TO PROVE MY RIGHTS UNDER THE EXISTING VALID (UNAMBIGUOUS) "LEGISLATIVE" LAWS OF THE STATE OF MAINE.

AND, it is my right under State and Federal LAW to HAVE PERFORMED that which the LAW DOES PROVIDE. (State vs Hamlin 86 Me. at p. 505)
(State vs Mitchell 97 Me. at p. 70)

In (State vs Hamlin 86 Me. at p. 505-506)

(quote) "*The Constitution guarantees to the citizen the right of acquiring, possessing and protecting property, Article I, Sec. I, which includes also the right of disposal. BUT THE GUARANTEE CEASES TO OPERATE AT THE DEATH OF THE POSSESSOR. THERE IS NO PROVISION OF OUR CONSTITUTION, OR THAT OF THE UNITED STATES, WHICH SECURES THE RIGHT TO ANYONE TO CONTROL OR DISPOSE OF HIS PROPERTY AFTER HIS DEATH, NOR THE RIGHT TO ANYONE, WHETHER KINDRED OR NOT, TO TAKE IT BY INHERITANCE. Descent is a creature of Statute, and not a natural right*".

(Emphasis Mine) (2 Blackstone's Com. page 10-13) Strode vs. Commonwealth 54 p. St. 181)

(quote) "*IT ENABLES THE FEDERAL COURTS TO ENFORCE THE RIGHT, EVEN WHEN THE STATE COURTS SHALL REFUSE TO DO IT*".

(My emphasis) — State vs. Mitchell 97 Me. at p. 70-71)

AND, as stated in 3 AM. Jur. p. 336; (287 U.S. 1)

(quote) *"The United States Supreme Court will pass upon the constitutionality of STATE statutes, where constitutional RIGHTS are involved — when it appears that the party IS within the CLASS raising the QUESTION".* (Dyer Brief to Law Court p. 77)

(quote) *"The terms of the constitution are to be read into the statute.*

(State vs. Mitchell
97 Me. at page 76)

BECAUSE: The Honorable Supreme Judicial Court of Maine has not considered or ANSWERED, the Constitutional question; or applied the intestate statute, and IGNORED THE STATUTORY PROBATE LAWS of the State of Maine; I respectfully state that UNFINISHED LEGAL PROCESS — remains to be legally completed, especially in the Probate Court's jurisdiction.

FOR EXAMPLE: under Title 18, Chap. 205, Para. 1551, M.R.S.A.

(quote) *"Upon the death of ANY person intestate, the Judge having JURISDICTION shall grant administration of such intestate goods, — on estate to WIDOW, husband, NEXT OF KIN," (etc.)*

THE PROBATE COURT "IS A STATUTORY COURT". (Roukos Estate 141 Me. at P. 83). — Therefore, all probate proceedure is ALSO regulated by the LAWS OF MAINE . . . (This process cannot be ELUDED).

In Hammond vs. Street: (106 Me. at page 213)

(quote) *"It is a general principle of construction that where a right is given by STATUTE and a REMEDY provided in the same act, the right can be pursued in no other mode".*

"The language of the statute under consideration is plain and unambiguous. Some beneficiary named therein MUST exist at the TIME OF THE DEATH of the deceased, otherwise NO right of action exists".

"No right of action is to be INFERRED and no remedy is to be given except as specified in the statute".

To para-phrase: —

(quote) *"The construction contended by the (Maine LAW COURT) VIOLENTLY distorts the plain language of the STATUTE, while that adopted (by your Appellant) follows its NATURAL AND REASONABLE meaning. It is therefore the opinion of the court that this action cannot be maintained".*

(quote) *"In other words, the (MAINE LAW COURT) has taken the position that the administrator is given a right of action in any event and the beneficiaries should be determined, NOT as of the date of the DEATH, but of the recovery. Such a construction CANNOT be adopted as in STRAINS the language of the STATUTE beyond its TENSIL strength".*

(Hammond vs. Street)
(My emphasis) (Supra)

In the herein case, (Estate of John Cassidy 313 A. 2nd 435) the same problem exists. A valid statutory civil right continues to exist, in the appellant, who is the ONLY DIRECT LINEAL "MEDIATE" CLASS survivor (in esse), of the said John Cassidy. EITHER THE INTESTATE STATUTE IS APPLICABLE, — OR IT IS NOT . . .!

IF NOT; — THE ESTATE *IS* "INTESTATE" ANY WAY: — AND MUST BE SO PROBATED.

In State vs. Mitchell, (97 Me. at page 70)

(quote) *"The scope of the clause cited from the XIVth Amendment, that NO STATE shall deny any person within its jurisdiction the equal protection of the laws, has often been considered by the Federal and State Courts and more or less conflict of opinion well established. Though the words of the clause*

are prohibitory, they can contain a NECESSARY IMPLICATION OF A POSITIVE RIGHT, the right of every person — to an EQUALITY before every law, the right to be FREE from any discriminations as to legal "rights" or duties a STATE may seek to make between him and other persons".
[My emphasis]

Strauder vs. West Virginia, 100 U.S. 303.

(quote) *"A FEDERAL SANCTION TO THE 'EQUALITY OF RIGHTS' IS EMBEDDED IN THE MAINE BILL OF RIGHTS".*
(quoted from Dyer Brief to Law Court at p. 90-91)

I, Edythe L. (Rice) Dyer, the appellant herein, was (once) CLASSIFIED by the Probate Court, and by the Maine Law Court in Cassidy vs. Murray (144 Me. 326). — I was the only "PER STIRPES" CLASS claimant. (My mother pre-deceased Mr. Cassidy, I alone survived her. Four (4) direct immediate class children also survived Mr. Cassidy.

I object to being reclassified by a (LAW) court which is without JURISDICTION, to re-classify a DIRECT "MEDIATE" CLASS SURVIVOR, UNDER THE PROBATE AND INTESTATE STATUTORY LAWS OF MAINE.

YOUR PETITIONER CLAIMS THAT BOTH FACTS AND LAW CONTINUE IN DISPUTE, BECAUSE THE "LEGAL" QUESTION PRESENTED, and its application, according to the ADMITTED FACTS (AS FOUND BY PROBATE COURT), SHOULD HAVE BEEN ACTED UPON IN A "LEGAL" MANNER, as admitted in this case, (Estate of John Cassidy) 313 A. 2nd at page 438 — 439, — — (9).

(quote) *"Equity will not assume jurisdiction of a bill for construction of a will where any doubt as to the meaning of the language of the will should have been removed by previous decision".*

ALTHOUGH NO TIMELY EQUITY APPEAL EVER EXISTED: THE MAINE LAW COURT SET-ASIDE ALL ORIGINAL PROBATE FACTS, SUBJECT MATTER, PROCESS AND PROCEEDURE, RE; (2) PREVIOUS PROBATE DECREES. (Dyer Brief to Law Court at page 94-95 and 107)

It is to be noted:

> That the "Supreme" Law Court and the "Supreme" Probate Court ARE BOTH appellate courts of their own final jurisdictions. It was unconstitutional for the law Court to REVIEW that which two (2) probate courts had certified (as true) to the Law Court; — FOR LAW.

It was unconstitutional for the Law Court to PERMIT the applicable intestate statute, to be INCORPORATED by reference, into the Cassidy Will; NOT BEFORE (43) years after he DIED.

It was unconstitutional for the Law Court to ORDER the Supreme Court of Probate — to OMIT the direct "mediate" class survivor, as a CLASS. ("Classes" do not LAPSE). — — — (Hunt vs. Hunt 37 Me. at p. 343)

Under, 4 M.R.S.A. Sec 401, (probate appeals): — BEFORE ANY APPEAL IS POSSIBLE the following statutory law is required — —,

> (quote) *"All cases appealed directly from the probate court shall be CERTIFIED to the register of probate, of the county from which said APPEAL ORIGINATED".*
>
> (4 M.R.S.A. Sec. 401)
>
> (Thompson Appellant 116, Me. 473)

As stated in Cutting vs. Tilton, 118 Me. at page 94, did the Maine Law Court; exceed its "allowable practice" as a law court?

However in the Cassidy Tax case the Law Court admits:

(quote) *"We conclude that the inheritance tax due the State of Maine of the remainder created by the trust under the will of John Cassidy must be assessed on the basis of the rates in effect applies to the balance determined AS OF THE DATE OF THE TESTATOR'S DEATH, March 25, 1918".*

Johnson vs. Stetson
(159 Me. at page 44)

YES, YES! — — —

The case of Johnson vs. Stetson, (Supra) admits that the "LEGAL" estate (quote) "PASSED" on March 25, 1918: — — — (not on June 9, 1961)

In the sense of the intestate and probate statutes, the LEGAL claimants, are unnamed creatures of statutory law, — in classes, which the statute alone created. NOTHING MORE!

In my Brief to the Law Court (Sept. 1973) (at pages 3-9) I questioned the LEGAL EFFECT of the QUESTION OF LAW: — which the Law Court was duty bound to define for the PROBATE COURT.

At page #11 to 19, LEGAL CONSIDERATIONS plainly probed the fact that Mr. Cassidy's "LEGAL" ESTATE, (Quote) "PASSED" on March 25, 1918, as admitted in Johnson vs. Stetson (159 Me. at p. 38) and was correctly PROBATED — (WITHOUT APPEAL).

LEGAL DEPRIVATION of property occurs when full use, or POWER to dispose of it is gone. McKay vs. McInnes
49 S. Ct. 34, (279 U.S. 820)

ANOMALY EXISTS: because of the presumption that Mr. Cassidy (quote) "MUST" legally die (43) years after he actually died: — this is prejudicial to the DIRECTLY EXISTING (per stirpes) MEDIATE CLASS; — and permits "special privilege" for more remote claimants. Although all DIRECT "IMMEDIATE" CLASS survivors are now deceased; — (*and*, survived by their remote survivors) the only DIRECT "MEDIATE" CLASS survivor claims to be —

(quote) *"RESTRICTED ONLY BY THE LIMITATIONS FIXED BY THE INCORPORATED STATUTE.* (158 Me. at p. 103)
Murray vs. Sullivan

The Law Court's "CIRCULAR" reasoning is hypothetical (not law). It has reasoned backwards, and presumed, "the FIAT end, justifies the means".

Namely that:
A "NEW" DEATH DATE — presumably (quote) "SHOULD", INVOKE THE APPLICABLE INTESTATE STATUTE. — BUT, WHAT ABOUT OTHER APPLICABLE LAWS OF THE STATE OF MAINE; — SUCH AS PROBATE LAWS; AND "CONSTITUTIONAL" LAWS —?

The Court said Mr. Cassidy "SHOULD" intend for the statute to operate "AS THOUGH" no child (or child's ISSUE) directly survived him: — on March 25, 1918, — (158 Me. at p. 102). — BECAUSE the intestate statute was NOT incorporated by reference into his will; — until AFTER; — all (4) (children) who DID "DIRECTLY" SURVIVE HIM; — were all dead.

Then, the Court went on to say, (IPSE DIXIT) — that:

(quote) *"to effectuate the testator's intention — the statute MUST be applied — after the death of his last surviving child —".* (158 Me. 107)

"Because the distribution was for ALL [?] of his LINEAL descendants — and (quote)," — restricted ONLY by the limitations fixed by the incorporated statute".
(158 Me. at p. 103)

AND

(quote) *"The Legislature seems to have made the SAME ASSUMPTION, — in the SECOND SENTENCE of the quoted (applicable) statute". — (But what about the first sentence —?)* (158 Me. at p. 108-109).

THE PRACTICAL SCIENCE OF LAW: — HAS CAUSE TO BLUSH, BECAUSE THIS VOID, — HYPOTHETICAL, CIRCULAR CONCLUSION, — MUST RETURN TO WHERE EVERYTHING STARTED: (in the original jurisdiction of a probate court) — if original probate "res judicata" is applicable.***

***FOR A "FOUNDATION" UPON WHICH TO PRESENT —

(quote) *"A question of law", — under an AGREED statement of facts: — TO A LAW COURT.*

NOTE:

When Mr. Cassidy died: — the disposition of his property (after that date) precluded NEW STATUTORY FUTURE INTENTION.

SURELY, if the (quote) "SAME MANNER", which the Maine Intestate statute required (quote) "AT THE TIME OF HIS DEATH" — (did NOT *continue* to control the *disposition* of his estate thereafter); — THE STATUTE (quote) "SHOULD" — NOT; (AND OBVIOUSLY DOES NOT) — "LEGALLY" LEND ITSELF TO CREATE; — (quote) "A NEW CLASS" — (AGAIN) — (for the first time); — (43) years AFTER Mr. Cassidy actually "legally" DIED.

THIS IS NOT ALLOWABLE (law court) PRACTICE (Cutting vs. Tilton) (Supra)

Judicial FIAT could construe any hypothetical — (original) situation, — IF IT CANNOT BE APPEALED, — this is not DUE PROCESS.

IF a citizen is LEGALLY guilty for hunting on Sunday; — (regardless of the fact that a Court presumes he

INTENDED to be hunting on Monday) — HE MUST BE PRESUMED, TO HAVE KNOWN WHAT HE INTENDED; — AND TO KNOW THE APPLICABLE LAW. Anything else is mallum prohibitum.

(Please see My Review Brief, Jan. 15, 1974. at page 9-10)

The Maine Law Court has AGAIN relied upon judicial FIAT, to "nail down" the VOID case of Murray vs. Sullivan: —

FOR EXAMPLE: —
IN the case of (Estate of John Cassidy, at page 435) (2) it NOW admits that:

THE, — *"decree of Superior Court acting within its competent jurisdiction (as an inferior court) in construing — the interest of trust beneficiaries WAS binding on ALL parties, ABSENT a successful attack directly on appeal: — AND SUCH NOT HAVING OCCURED. The issue could not be relitigate".*

(My Emphasis)

Please Note: —
OF COURSE; — *"A successful attack directly on appeal has not occurred",*

BECAUSE

Every appeal which I have attempted since the Murray vs. Sullivan case, (1962) — (all the way to the U.S. Supreme Court) — has been DENIED, constitutional "DUE PROCESS".

* * * *

IMPORTANT: —

On Dec. 26, 1973, the Supreme Judicial Court of Maine: AGAIN — SPOKE, (re: The Murray vs. Sullivan case) and admitted for the first time, that it DID: (INTENTIONALLY or otherwise):

(quote) *"DETERMINED THE LEGAL EFFECT, of what John Cassidy (actually) said".*

(My Emphasis)
(313 A. 2nd at p. 439)

This constitutes and admission, and new evidence which has not previously been available.

With one word, "LEGAL" the Court swept away its previous conjecture, presumptions, *and* the Murray case.

Undeniable and impeachable proof exists; — that it was the Court's LEGAL DUTY to apply both sentences of the applicable intestate statute in a "LEGAL MANNER", without construction.

THE COURT SAID MORE, IT ADMITTED;

(quote) *"It could give NO HEED to what he (Mr. Cassidy) MIGHT or "SHOULD" have said.*

(313 A. 2nd at p. 439)
(My Emphasis)

IT IS NOW (in effect) ADMITTED, that the (quote) "question of law," — (R. 402) — (quote) — ("as the rights of the parties require") — (R. 401) — As Reported, under an Agreed Statement of Facts; — HAS NEVER BEEN "LEGALLY" ANSWERED.

The word LEGAL, takes the "case" — out of Murray vs. Sullivan, and away from the nebulous world of presumption, construction, FIAT, and places it "plunk" in the catagory of any other LEGAL INTESTACY.

Please Note:

I have finally received the answer; which I have requested, and requested, and requested, — and been denied, and denied.

IT IS ADMITTED, —

(quote) *"This court in Murray, examined, discussed and determined the LEGAL effect of what John Cassidy said."*

(313 A. 2nd at p. 439)

****HOW BEAUTIFUL! — BUT IT IS NOT TRUE — !

THIS STATEMENT RESCINDS, AND PROVES:

THAT,

The final (Probate) distribution decree referred to in the case of Estate of Cassidy, (Supra) is NOT VALID.

THAT:

The presumed hypothetical construction in Murray vs. Sullivan SHOULD HAVE HAD, (quote) "THE LEGAL EFFECT".

THEREFORE: —

It would NOT be incongruous (quote) "to permit", — the "LEGAL" effect of the intestate statute to OPERATE. (including the First Sentence.)

(Murray at p. 107)

THAT:

The "limitations of the statute" REQUIRE THE "LEGAL" effect of Mr. Cassidy's death, at the TRUE time of his death (which is the only time the LEGAL effect (as a result of the epoch of his death) is LEGALLY possible, under the "applicable" statute. (Murray at p. 107)

AND THAT: —

The Court now "thinks" it most normal and natural that the testator — "SHOULD" view his "LEGAL" LINEAL descendants, NOT AS A "NEW CLASS", — but in the "SAME MANNER" (quote) "provided by (the continuing legal effect of) the" LAWS of the State of Maine for the DESCENT — among lineal descendants of (his) INTESTATE PROPERTY".

— ("should") — (Murray at p. 102)
("as provided") — (Murray at p. 99)

OBVIOUSLY:—

"IT could give no heed, to what he "might" or "should" have said".

BUT THAT IS EXACTLY WHAT THE COURT HAS DONE WITH "FIAT", — AND REFUSED TO REMEDY.

FRANKLY; — HAS THE PROBATE COURT (a court of competent jurisdiction) ISSUED A VALID DISTRIBUTION DECREE —? (of its own) in a LEGAL manner, as required by statutory probate proceedure —? — Not Yet!

***MY MOTION, INTENDS TO SAY:

THAT ONLY this Honorable Court, can SUPERVISE this strange and strained conflict of LAW between two different branches of Maine government; — and two "SUPREME" judicial jurisdictions.

THEREFORE: —

** (QUESTIONS PRESENTED)**

(a) Will this Honorable Supreme Court of the United States please take jurisdiction of this case, so that justice may be done . . . ?

(b) Have my Civil Rights, been denied:— The SAME, "due process" the same "equal rights", (which any mediate class citizen might have claimed) under the protection of the laws of the State of Maine and the United States government . . . ?

(c) Will this Honorable Supreme Court please exercise its power of SUPERVISION, under U.S.C. Rule # 19, 30, 31?

****

(d) Was it "LEGAL" for the Maine Law Court to refuse (quote) To "PERMIT" the Maine intestate statute to CONTINUOUSLY OPERATE, AS REQUIRED BY, — (quote) "THE LAWS OF THE STATE OF MAINE?
(Murray at page 99)

(e) Was it incongruous for a "Supreme" law court to force a "Supreme" Probate Court to create (de novo) "NEW" — (Statutory) "LINEAL" HEIRS, (43) years AFTER Mr. Cassidy DIED? (158 Me. at page 107)

(f) Can the irrefutable, irreducible and inexorable legislative "public policy" of the State of Maine, have a (quote) "— future legislative method", (158 Me. at page 108):— for creating a (quote) "NEW CLASS", for the PROBATE COURT which Mr. Cassidy (quote) "SHOULD", have intended?

(g) If so, could this statutory provision have provided the "SAME MANNER" of distribution, without a FALSE DEATH DATE —? DID AN EXISTING LEGAL REMEDY EXIST? (pro forma . . .?)

(h) Could a DIRECT "MEDIATE" (per stirpes) Survivor (the issue of a child who pre-deceased Mr. Cassidy) — waive LEGAL CLASS RIGHTS; — or surrender the original Probate Court's (unappealed) JURISDICTION?

****

(i) Is it true that:

(quote) *"Nothing in a statute shall be construed as surplusage, if a reasonable construction supplying meaning and force is possible" —?*

U.S. vs. Kreider
313 U.S. 443
(quoted in)
National Newark vs. Hart
309 A. 2nd 512, (Me.) 1973.

****

(j) Is it true that: law courts may not REVIEW AGREED FACTS . . .?

(quote) *"The Legislature in constituting the Law Court, (and its jurisdiction) — did not intend it to be used as a substitute for presiding judges, (to RELIEVE THEM) in trial courts, from the duty of deciding — MERE INTERLOCUTORY QUESTIONS".*

(My Emphasis)

****

STATEMENT OF THE CASE

FIRST:

The Name of this case is:

RE: ESTATE OF JOHN CASSIDY,
313 A. 2nd 435 (Me.) (1974)

It is important to stress the fact that this case concerns an appeal, which originated in the Probate Court of ORIGINAL JURISDICTION, (1918) and (1969).

And which finally terminated in the Supreme Judicial Court of Maine, as filed on February 21, 1974.

It does not seek to review the case of Murray vs. Sullivan 158 Me. 98.

All appeals and motions have now been denied; apparently, no LEGAL remedy, now judicially exists, under Maine law; and the Courts have refused to answer the UNCONSTITUTIONALITY of the questions presented.

SECONDLY:

As stated in the case, Estate of Cassidy, 313 A. 2nd at page #437, my case does not; (as Court suggested at page #437) — "bottom itself", — as seeking a REDETERMINATION, OR NEW DECLARATORY JUDGMENT of the case of Murray vs. Sullivan, 158 Me. 98, (179 A. 2nd 307) (1962).

THIS EXCUSE, FOR NOT ANSWERING THE CONSTITUTIONAL QUESTIONS PRESENTED: — — IS NOT BASED UPON FACT; THE PROBATE ISSUES; OR STATUTORY REQUIREMENTS.

The presumption that a new declaratory judgment was desired: —

IS A DEAD END STREET

WHICH I REFUSE TO BE

FORCED TO ENTER.

This evasion is more of the same "ipse dixit fiat", — that "father knows best:" — BUT IT IS NOT LAW. The appellant declines to "get lost" down a dead end street, or "go away" and please forget about required probate law; — constitutional rights: due process; and the EQUAL PROTECTION to have performed that which the mandate of the Maine INTESTATE STATUTE CONTINUES TO PERMIT ME TO CLAIM, — "in infinitum".

(Hunt vs. Hunt, 37 Me. at p. 343)
Dodge vs. Dodge 113 Me. p. 158

As plainly stated in my Appeal Brief to the Law Court, (September Term 1973) at page #2,

(quote) *"Mrs. Dyer DOES NOT SEEK; "A NEW DETERMINATION MADE BY THIS COURT," as Judge Woodcock's Probate Order of Dec. 22, 1969, IMPLIES".*

(quote) *"This statement is one of the reasons for my appeal. NOTHING NEW is requested, BUT EVERYTHING PRIOR to June 9, 1961; — — being Res Judicata" — — (in the Probate Court).*

And at page #13, of my Motion for Review, dated Jan. 15, 1974, I said: — — —

(quote) *"Will the Court please try to understand that one of the reasons for my appeal to the Law Court, was because of this limited (and legally hopeless) false premise, which cunningly attempts to restrain me into an indefensible situation".*

"DUE PROCESS", HAS BEEN DENIED:— —

via, — — "a dead end" judicial street.

NOTE:

It is often the policy of appellate courts to avoid answering "Constitutional" questions:— — IF they can be disposed of in any other manner.

PLEASE NOTE:

This case (Estate of Cassidy) is now pending in the PROBATE Court, of original jurisdiction. The Record will show (R. 4) to (R. 16) that CONSTITUTIONAL questions were raised, re: due process, procedure, and equal rights under statutory law, together with jurisdictional questions. A VALID final probate decree, was requested (R. 4) — (R. 12).

Instead of answering these questions and requests; (R. 15)

— (R. 16) the Probate Court looked for reasons why it would not answer fundamental constitutional questions which have been constantly reserved. — — Such as the new Declaratory Judgment allegation. (Supra).

At (R. 19)

The Court ignored the fact that; — —

(1) Constitutional issues should be answered.

(2) If such issues have been overlooked, everything to date (re: Murray vs. Sullivan) is VOID. — — I have repeatedly alleged that the case of Murray vs. Sullivan 158 Me. 98, — — IS A NULLITY: — — requiring justice to be done.

The Court frankly admitted at (R. 21) that:

(quote) *"Perhaps the real basis for Mrs. Dyer's complaint is stated in the petition dated Oct. 16, 1969, where she says, — — "JUSTICE has not been done in Murray vs. Sullivan". (R. 21).*

However, the Court chose "a way out" by *NOT* ANWSERING HOW JUSTICE HAS BEEN "LEGALLY" DONE, ACCORDING TO FACT, AND LAW, — IN A CONSTITUTIONAL MANNER.

The Court said:— —

(quote) *"The petition seeks to have a NEW DETERMINATION made by this Court — ". (R. 19).*

On Oct. 6, 1972, the Supreme Court of Probate at (R. 322) went along with the lower probate court.

(quote) *"Because the Appellant appears Pro Se and without assistance of counsel, the Court has CHOSEN TO TREAT the motion, as a motion for judgment on the pleadings RATHER THAN rely on the more narrow grounds of sufficiency of the Appeal and Reasons for Appeal." (R. 322)*

(My Emphasis)
(opponent Attorney's Brief page 2)

Legal grounds do exist; — — and no matter how narrow they may appear to the Court, — — fundamental "CIVIL RIGHTS", require answers.

However, the Supreme Court of Probate jumped at the opportunity to agree with the lower court's presumption, that a NEW DECLARATORY JUDGMENT, of the Murray vs. Sullivan case (supra) was being sought.

The "Murray" case (by necessity) had to be referred to, because it concerned the (PROBATE) distribution of the estate of John Cassidy. It has been constantly and continuously protested, as the Probate Record of distributions to date, will show. (All distributions made to date, have been "under protest".)

The Murray case will also be referred to herein, so that background and history, may be easily understood. Also to show how, when and why, the case of (Estate of Cassidy) (supra) stands upon its OWN ORIGINAL "res judicata" merits, as a prior process.

THE PROBATE FACTS AND CERTIFIED SUBJECT MATTER, (re: the Cassidy Estate) WAS PROBATED, ON APRIL 13, 1918. — — (R. 245)

THIS FACT HAS NEVER BEEN TIMELY APPEALED.

It was subtle and void for the Maine Law Court to continue to overlook all PRIOR — — "res judicata" PROCESS AND PROCEDURE IN THE PROBATE COURT.

It was arbitrary to technically allege that a NEW DECLARATORY JUDGMENT WAS desired by the appellant, rather than a PROBATE DECREE (WHICH IS "VALID") AS REQUESTED.

(R. 90-95)

Please see my Review Brief, (Jan. 15, 1974) at page 8, and 12 to 14:

Instead:

The Law Court also took the easy way out, by resorting to RES JUDICATA, — — — "a la" Murray vs. Sullivan, 158 Me. at page 107.

May I respectfully represent that the Court's "res judicata", is applicable ONLY TO VALID ISSUES DECIDED, ON THE BASIS OF TRUE FACTS, — — (presumably certified to the Law Court, by the Supreme Court of Probate.

***(Not, facts found by law court, and certified to probate court . . .! — — (inversely . . .!)

Proof exists: —

In Murray vs. Sullivan at page 100; — — (the Court admits) — — The claimants disagree ONLY as to the PROPORTIONS, which the (quote) "applicable", INTESTATE statute provided.

The "Supreme" Court of Probate was (only) confronted with an INTERLOCUTORY question of law, — as a result of the survivor trustee's request for legal instructions.

My Review Brief (1/15/74) at page 5, to the Law Court, plainly points out, that construed HYPOTHETICAL presumptions are NOT APPLICABLE TO THE DOCTRINE OF "RES JUDICATA", AS FACTS DECIDED.

(31 U.S. 337)
(57 S. Ct. 816)
(Appellants Brief, Sept. 1973
— — at p. 77)

However, the Court chose to rely upon IPSE DIXIT PRESUMPTION and FIAT, by quoting the opponent attor-

ney's contention. (in Estate of Cassidy) — (313 A. 2nd at p. 439)

> (quote) " — — *her persistent course of conduct, which seemingly ignores judicial FIAT OF BOTH the highest court of the State, AND THE UNITED STATES.*"

*It appears that because this Honorable U.S. Supreme Court, previously denied certiorari re: the Murray vs. Sullivan case, it should consider the fundamental PROBATE issues, which make the Murray vs. Sullivan case a VOID NULLITY. If this Honorable Court will please SUPER-*VISE (if nothing more), — — "Justice can be done."

These two (2) cases (Murray vs. Sullivan) and Estate of Cassidy) — — represent two different situations. BUT, each case requires a "LEGAL" remedy and judicial cognizance of FUNDAMENTAL CIVIL RIGHTS.

Murray vs. Sullivan originated under an Agreed Statement of Facts, in which NO FACTS were contested.

> (quote) *"They disagree only as to the size of the share each CLAIMANT should receive".*
> (Murray vs. Sullivan 158 Me. at p. 100)

All interested parties agreed, and so did the Maine Law Court, (158 Me. at p. 100) that: — — —

(quote) *"The APPLICABLE STATUTE", —— "IS" — — — "R.S. (1954) Chap. 170. Sec. I, Sub. Sec. II," — which is the Maine Intestate Statute for the descent of Intestate property.*

THE MAINE LEGISLATURE plainly requires: — —

(quote) *"The remainder of which he DIES, seized, — — (no widow) — — the whole shall descend in equal shares to his children, — — AND to the lawful issue of a ("pre") deceased child by right of representation.*

"If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same DEGREE OF (class) kindred; IF NOT, according to the right of REPRESENTATION". — (My Emphasis)

It is alleged, in Murray vs. Sullivan that: — —

(quote) *"The Legislature seems to have made the same ASSUMPTION — — in the second sentence of the quoted statute".*
(158 Me. at p. 108-109)

(Question) Is the Law Court's ASSUMPTION in harmony with the Legislature's assumption?

Obviously, if the Legislature's LEGAL INTENT IS NOT, as applied in Murray vs. Sullivan; THE CASE IS A LEGAL NULLITY.

The appellant repeats, that the statutory application, which the Maine (LAW) Court relies upon; IS LEGALLY IMPOSSIBLE, in both the LAW COURT, AND THE PROBATE COURT.

Maine cases hold that "classes do not lapse"; — — nor can established probate facts be "set aside".

Hunt vs. Hunt 37 Me. at p. 343 (in infinitum)	Morse vs. Hayden 82 Me. at p. 230 (Statute prevents lapse)
125 Me. at p. 173 (Strout vs. Chesley) (Two classes)	Title 4, M.R.S.A. 203, and 251 Chap. 7 at page 199 (Legal Descent: — and probate jurisdiction)
Eacott Aplt. 95 Me. at p. 526 (no law court review)	Title 4, M.R.S.A. 403-406 (as law and justice require) (Appeal)

Rule #52 M.R.C.P. at page 216, (Findings of fact, by Probate Court, will NOT be set aside unless clearly erroneous.

However: — —

The opponent attorney's Brief at page #1 in the (Estate of Cassidy) case, admits:

(quote) *"This case must commence by a petition dated Oct. 16, 1969, filed with the Probate Court within and for the County of Penobscot".*

(quote) *"Within the time alloted by law an appeal and purported reasons for appeal were filed by the appellant". (R. 24. — — 125).*

My Note: —

The fact that the case was "procedurally" before every court in the state (which did have competent jurisdiction): — — I AM APPEALING, — for

constitutional supervision.

(1) The "dead end street presumption; which eludes the issues without required valid answers.

(2) The Ipse Dixit Fiat, so peculiar to this case was not based upon the science of Corpus Juris Law, — or stare decisis law.

The "father knows best" attitude, is prejudicial. It admonishes the appellant to "please go away" — — and let's forget about the Probate Court and my Constitutional rights to "due process"; — — and to have performed "EQUALLY" THAT WHICH THE LEGISLATURE WOULD MANDATE (in any other intestate situation) so that, "SPECIAL CLASS PRIVILEGE", may NOT prevail.

The attorneys admit at page #7, — — —

(quote) *"The Probate Court in its decree dated Nov. 22, 1969, denied the Appellant's Petition for a NEW DETERMINATION as to the final distribution of the Estate of John Cassidy, on the grounds that the issue presented by the Appellant's Petition WAS RES JUDICATA, as the RESULT of the decision of this (Probate) Court in Murray vs. Sullivan, supra".* (My Emphasis)

Please note, as previously stated herein; (Supra) — — "A NEW DETERMINATION", — — "AS TO" — — "MURRAY VS. SULLIVAN".

****WAS NOT REQUESTED.****

At page #11,

(quote) *"Probate Law has been BY-PASSED — —. A VALID PROBATE decree does not exist.* (*R. 59*)

In My Brief of Jan. 15, 1974 (to the Law Court, at page 17) — — quotes probate law, — — — which is not ELUDABLE. Obviously the alleged declaratory judgment, and the resulting res judicata, has nothing to do with this kind of law.

At page #18, and 19, (supra); — — under Title 14, M.R.S.A. Sec. 5960 Chap. 707 — "FURTHER RELIEF — — MAY BE GRANTED WHENEVER NECESSARY OR PROPER."

ORIGINAL (res judicata) is admitted; — —

In Judge Woodcock's (probate) decree of Oct. 16, 1969, — — (R. 17) he admits:

(quote) *"The facts in this case, the people who survive, are exactly the SAME PEOPLE who are mentioned in the AGREED STATEMENT OF FACTS, WHICH WENT TO THE LAW COURT and which was the BASIS of the decision in Murray vs. Sullivan."* (*R. 22*). (My Emphasis)

However: —

Can (2) two COURTS CREATE "ORIGINAL" JURISDICTION; — — AT TWO DIFFERENT TIMES? — AND, CREATE "NEW" ORIGINAL PEOPLE, — — "NEW" ORIGINAL FACTS; — — "NEW" ORIGINAL SUBJECT MATTER, — — NEW PROBATE PROCEDURE; AND CONSTITUTIONALLY APPLY SAME IN A VOID INTESTATE MANNER?

The Record will also show that all "claimants" agreed; to present the case to the Law Court — re: a question of statutory LAW.

And: that the Appellees herein agreed:

(quote) *"That this Court will fix the fees and disbursments in respect to these proceedings and will authorize plaintiff to pay from the principal of the trust estate such fees and disbursements"* *(R. 364)* *(2)*

This was the agreement:

I was appalled to learn of the case of Walker vs. Flynn Docket #6484, Penobscot County Superior Court, September 1966, — brought by the Appellee's lawyers: — to collect the unpaid balance due, re: a $300,000.00 ACCOMPLISHMENT fee.

See: Appellants
Brief to Law Court
September 1973
(page 100)

$300,000.00 in addition to the regular fees paid by the trustee — represents more money than "Watergate", — is all about.

In a letter dated Feb. 9, 1974, — from the Appellees attorney, (in reply to questions raised about the $300,000.00 "bonus"), the acting attorney said in part: —

(quote) *"As far as the legal fees paid by the Cassidy heirs to us are concerned, that very frankly is none of your business".*

However: — — at page #2, of the Attorney's Brief. (supra) — — they admit: —

(quote) *"The appellees CONCEDE that the appellant IS procedurally before the Law Court".*

[If nothing more, this admission represents that this separate probate action, WAS before the Law Court.)

The Cassidy Estate WAS PROBATED ON APRIL 13, 1918. — — — (R. 245)

****THIS PROCEDURE HAS NEVER**

BEEN TIMELY APPEALED.**

It was subtle and void for the Maine Law Court to continue to overlook all PRIOR — — "res judicata" PRO-

CESS AND PROCEDURE IN THE PROBATE COURT.

It was arbitrary to technically allege that a NEW DECLARATORY JUDGMENT was desired by the appellant, rather than a PROBATE DECREE WHICH MUST BE "VALID", — AS REQUESTED.

(Please see my Review Brief of Jan. 15, 1974 at p. 8 and 12 - 24) (R. 90-95)

*** STATUTORY LAW: — ***

Under Title 1, M.R.S.A. Sec. 72, (9) (Chap. #3; — statutory word; —

(quote) *"ISSUE; applied to the descent of estates, INCLUDES ALL LAWFUL LINEAL DESCENDANTS of the ANCESTOR".*

(Mr. Cassidy is my "direct" ancestor).

For Example: —

*** HERE, — is another unconstitutional fact —! "ALL" (of Mr. Cassidy's) ORIGINAL "lawfull lineal descendants (and his (2) original CLASSES, have been "legally" OMITTED. — ***

* (A "NEW" class created) *

FACTS, RE: A MATTER OF LAW are defined conclusively in: Salisbury vs. State 300 A. 2nd. 367 (Md. 1973)

At page 383; — (25-29). (supra)

(quote) *"A law which operates upon some persons or corporations, and NOT upon others — — or in the same CLASS is invalid. (Many U.S.C. cases)*

Facts are not found by a law court and certified to a probate court; all "original" procedure must come from a probate court.

Therefore, the "Supreme" Court of Probate was (only) presented an INTERLOCUTORY question of law; — — as a result of the survivor trustee's request for legal instructions.

These facts, issues, subject matter, and parties, had to be "originally" determined by the probate court of "original jurisdiction", as required by statute. BEFORE the Cassidy Will could be probated, — — or, presented to the LAW COURT; "ripe" for law.

If, these matters were not timely appealed, from the original jurisdiction, (AND THEY WERE NOT) — — many Maine cases hold that they cannot later be impeached or collaterally attacked.

THE TRUE MEANING OF (Bray vs. Spencer) — — 146 Me. 416 (1951) is that:

The doctrine of res judicata belongs to the "ORIGINAL PROBATE JURISDICTION" — — prior to the Murray vs. Sullivan case.

My Note:

Of Course I commenced a series of post proceedings; — in which I said that I, my heirs and assigns RESERVED FOREVER all rights to appeal this case.

The Record of this case, will prove that the Appellant herein was before the Probate Court of ORIGINAL jurisdiction, long before the case of Murray vs. Sullivan; — — (R. 412) — and (R. 421-429) — and that I was one of (quote) "HIS ONLY HEIRS AT LAW".

In fact, I appealed Murray vs. Sullivan (under the 14th Amendment) to the Supreme Court of the United States, for certiorari, (371 U.S. 947) — — 83 S. Ct. 501: (1963) — — without ANSWERS, (it was denied).

— If necessary, I pray for leave, to incorporate parts of the Murray case (supra) into this case, Estate of John Cassidy (supra).

JUDICIAL AMBIGUITY EXISTS:

(the intestate statute continues to constitutionally permit a

"pre stirpes" class claimant, to claim by right of representation, because I am:

(quote) " — *restricted only by the limitations fixed by the incorporated statute*".
(Murray at page 183)

Please consider: (I alleged) that the intestate statute COULD NOT BE INCORPORATED BY REFERENCE, — (into the Cassidy Will) — until; (quote) "AFTER" Mr. Cassidy had been dead for over (43) years. Obviously nothing can be incorporated (by reference) for the first time "THEN".

If this is what the Law Court is attempting to do, — THE ATTEMPT IS A VOID INCORPORATION (because the referred to, incorporated document, HAD TO EXIST, when the Will was executed. — NEVER (43) years after the man died — !

The Court also referred to (quote): " — A FUTURE LEGISLATIVE METHOD".

(158 Me. p. 108)

Frankly, no future legislative method "legally" exists (under the laws of Maine). This "LEGAL" presumption is prejudicial to original direct "lineal" survivors: — This kind of conjecture does violence to the statute.

This conjecture destroys the FACT that I was a DIRECT; — (quote) "per stirpes" class, — "lineal" descendant of the said John Cassidy, AT THE TIME OF HIS DEATH, (March 25, 1918).

Cassidy vs. Murray
(144 Me. 326)

** STATUTORY CLASSES ONCE FIXED BY LAW CAN NEVER LAPSE.**

(Hunt vs. Hunt 37 Me. at p. 343)

THE WHOLE CONCEPT, OF BOTH CASES, CRY FOR THE ONLY LEGISLATIVE "LEGAL" REMEDY; WHICH CAN SO EASILY BE APPLIED (AS AN EXISTING REMEDY) WHETHER OR NOT, THE ESTATE *IS ACTUALLY INTESTATE.*

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** IN BRIEF**

"PRO SE — GEMS"

JURISDICTION, IS OF TWO PARTS:

(1) —— jurisdiction of the subject matter; (it can never be waived).

(2) — jurisdiction of the interested parties; (can be created only by consent, stipulations, or "legal" action.)

(I plead innocent on all counts)

This case (Estate of Cassidy) primarilly concerns Jurisdiction of the subject matter, which has been ESTABLISHED and proved in a probate court, as early as April 1918. — It cannot be "by-passed".

(Neely's Estate, 136 Me. 79
1 A. 2nd 772)

The Maine Law Court had no LEGAL jurisdiction over any party who was NOT, (quote) a — "LINEAL" DESCENDANT, of the said John Cassidy.

(deceased March 25, 1918)

Subject Matter: — also concerns the "APPLICABLE" Maine Intestate statute; which is always "standing by" — PROSPECTIVELY and applicable, at any time — a Will ceases to be effective and without future testate direction or control. Such a situation existed on June 9, 1961, when Mr. Cassidy intentionally attempted to let the law take its own course. (313 A. 2nd at page 338, 435)

(quote) *"IN THE SAME MANNER, and in the same proportions", — as the LAWS OF THE STATE OF MAINE "LEGALLY" PROVIDED, FOR (HIS) "LINEAL" DESCENDANTS, TO TAKE (HIS) INTESTATE PROPERTY.*

****

INTESTACY, IS OF TWO PARTS:——

> *The Cassidy Trust, existed only for the duration of the lives of his "IMMEDIATE" CLASS; — composed of (4) surviving children.*

THE STATUTORY "MEDIATE" CLASS WAS FREE, AFTER THE TRUST TERMINATED.

****

(ONLY, testamentary SILENCE, and the "Same Manner" of the inexorable intestate statute prevailed, AFTER the Trust Terminated); — re: THE "MEDIATE" CLASS RIGHT; — TO "LEGALLY" TAKE (1/3) OF THE ESTATE BY "REPRESENTATION; — OR BE (LEGALLY) OMITTED.

A surviving WIDOW, would present a better example, in the Cassidy situation. (If a widow had survived him —!) The statute would legally mandate her rights, as of March 25, 1918; in the (quote) "SAME MANNER". AS IT CONTROLS THE "MEDIATE" CLASS RIGHT.

OMISSION EXISTS: THE "MEDIATE CLASS" SURVIVOR'S STATUTORY RIGHTS, AS CLAIMANT, CONTINUES TO BE FIXED BY LAW: — AS THOUGH, NO TRUST EVER EXISTED.

The Appellant herein, being Mr. Cassidy's ONLY *DIRECT* — "MEDIATE CLASS" SURVIVOR; — "in esse" — is now LEGALLY FREE from the TERMINATED Cassidy Trust.

I am,

> (quote) " — *restricted only by the (class) limitations fixed by the incorporated statute*".
>
> ***** (Murray at page 103)

STATUTORY CLASSES, — NOT PEOPLE, — ARE INVOLVED HERE: — Being only a mere (unnamed) member of the "MEDIATE CLASS" which can not legally lapse; (Hunt vs. Hunt, etc.), — I have the same LINEAL "statutory" right which I have always had.

However, what ever rights the remote survivors of the DECEASED DIRECT "IMMEDIATE" CHILDREN may have; is not for me to promulgate, or presume; IF AMBIGUITY EXISTS, IT CONCERNS THE CLASS (or no class) to which the remote survivors may claim under. — which is of no concern to me.

Therefore: — MY LEGAL "CLASS" RIGHT, as a direct "LINEAL" CLAIMANT CANNOT BE "WAIVED", or legally lapsed, by me, or any court.

Certainly I have reserved my CLASS RIGHT which ("in the eyes of applicable intestate law") (and the probate laws of the State of Maine) could have been applicable: —

Namely:

(1) On March 25, 1918; (and/or) —

(2) — on June 9, 1961; — and today on May 4th, 1974; —

(3) and forever after, (quote) "IN INFINITUM" (Hunt vs. Hunt) etc.

The stipulated word "LINEAL"; (if applicable) — must mean in a DIRECT LINE of descent BY CLASS, (or) CLASSES, from the deceased, starting at the true time of his death; — because no class, (IN A LINE OF DESCENT) could be legally omitted.

No one, but no one, (in the whole world) can now legally claim to be *as* DIRECT; — OR "LINEAL" — ("IN A LINE" OF DESCENT from Mr. Cassidy) — as your Appellant herein.

That which I claim is NOT through a direct "immediate class" deceased survivor. NO, NO —!

The descent laws of Maine, clearly restrict, and require and restrict me (alone) to claim "by right of representation" — DIRECTLY FROM MR. CASSIDY; — and not "through" my mother, who "pre" deceased Mr. Cassidy.

I am Mr. Cassidy's *only* direct surviving lineal heir. No other remote claimant can make such a LEGAL CLAIM. (So, there now —!)

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As stated in Burt Co. vs. Burrows Corp.
158 Me. 237

> *"There is a strong policy running through the Maine cases just as through the federal cases, insisting that only 'final' judgments are RIPE for appellate review".*

BUT NO APPEAL EXISTED, re: —

> THE MURRAY VS. SULLIVAN CASE, — THE SUPREME COURT OF PROBATE SIMPLY STATED THE FACTS, — AND MADE NO JUDGMENT, OR OPINION.

The JUDGMENT which the jurisdiction of the (Supreme) Court of Probate required WAS A PRO-FORMA, — *LEGAL* "MANNER" — under which:

> (quote) *" — the laws of the State of Maine"* *** *would permit Mr. Cassidy's unnamed lineal claimants to take his (quote) "INTESTATE PROPERTY".* ***

NOTE:

> The "legal" manner, restricted the claimants to first qualify as IMMEDIATE and/or MEDIATE CLASS claimants. — there is no "FUTURE CLASS".

Obviously:

> Only your appellant, directly qualifies as a MEDIDATE CLASS CLAIMANT, (all others were more remote).
>
> It was not for the Law Court to find what Mr. Cassidy "SHOULD" have intended: but what he "legally" meant, by what he ACTUALLY SAID:— if "legally" possible. (re: Estate of John Cassidy, at p. 102)
>
> Whereas the Supreior Court found and presented the same facts and subject matter (in 1961); which the lower probate court had found (in 1918); the Law Court had a compulsory duty to define a "PRO FORMA" LEGAL MANNER of distribution, for the probate courts; — IF, IN FACT,

LEGAL CLASSES EXISTED. *** (IF NOT THE ESTATE HAD TO BE "REALLY" INTESTATE). *** ONE DIRECT CLASS *DOES* CONTINUE TO EXIST.!

NO JUDGMENT EXISTED TO BE APPEALED. IF THE FACTS PRESENTED, (AND SUBJECT MATTER) WAS NOT ACCEPTABLE TO THE LAW COURT; — *** THE FINDING COULD NOT BE "RIPE" FOR LAW; — OR, ORIGINALLY REVIEWED BY A "LAW" COURT.

If the Law Court had just answered "the question of law" — and left testamentary presumptions for the Supreme Court of Probate to determine; — the Supreme Court of Probate could have decided the case, within its own exclusive jurisdiction; — with opportunity for appeal, re: any questions of law.

As plainly stated in

12 Encyclopedia of Pleading and Practice, page 171,

" — the jurisdiction of a court depends upon the state of affairs at the time it is invoked, and if the jurisdiction once attaches to the person and the subject matter — — — litigation, — — — will not operate to oust the jurisdiction already attached".

A "SUPREME" COURT OF PROBATE, — CANNOT SURRENDER ITS JURISDICTION TO A "SUPREME" LAW COURT.

(R. 131) (R. 428)

NOR, CAN A LAW COURT CREATE A "NEW", — "FUTURE CLASS", — FOR THE MAINE LEGISLATURE.

MY APPEAL PLAINLY REQUESTS APPLICABLE STATUTORY LAW, WHICH A PROBATE COURT MAY (VALIDLY) APPLY.

(quote) *"Any enactment to which the state gives the force of law, — is a statute of the state, within the meaning of the acts of Congress relative to appellate jurisdiction of the Federal Supreme Court."*

Stevens vs. Griffith
4 Sup. Ct. — 283, 284
111 U.S. 48
28 L. Ed. 348

(125 U.S. 18)
(31 L. Ed. 607)

"A statute will not be given a construction which will render it unconstitutional or unreasonable if it is succeptable of reasonable construction".

(45 A.L.R. 189)
Words & Phrases
25 R.C.L. Sec. 256-257
(1935 Supp.)

The Maine Law Court (itself) has created more confusion and ambiguity than it attempted to solve. *** MY CLASS SITUATION IS NOT AMBIGUOUS.

THEREFORE:

ONLY this Honorable Supreme Court can say what is illegal: — (when a Supreme Law Court does something illegal) — LIKE OMITTING THE DIRECT "MEDIATE" CLASS, (in esse), inherent to the (quote) "applicable" Maine INTESTATE statute.

ALSO, WHEN IT REFUSED TO ANSWER; — OR, (quote) "PERMIT" — the question of law as Reported, under the (quote) "APPLICABLE" statute, to operate, pro forma.

Murray vs. Sullivan
(158 Me. at p. 107)

THE LEGISLATIVE INTENT CERTAINLY MANDATES A CAUSE FOR OBLIGATORY "CIVIL" CONDUCT; — EVEN FOR A LAW COURT.

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The nature of the case and the Maine Law Courts rulings may bring the case within the scope of Rule #30 - #31 U.S.C., in the discretion of this Honorable Court. The relief sought is not available in any other court, nor can it be had through any other appellate process.

For Example: ("in brief")

> Because a state law court refuses to "permit" a supreme court of probate to apply the valid "applicable" Maine intestate statute:— which in turn OMITS the only direct MEDIATE CLASS heir; — which destroys my "Civil" rights, under the protection of Constitutional laws, of both State and Nation. (28 U.S.C. Sec. 2403)

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THE WHOLE CASE HINGES UPON TWO WORDS:

"SHOULD", — — and — — "LEGAL"

"SHOULD", — has been "cancelled out"
(313 A. 2nd at p. 437)

"LEGAL" — has been "added"

The (quote) "legal effect" of that which the (quote) "the laws of the State of Maine" CONTINUED TO REQUIRE (43, years after Mr. Cassidy's death) — MUST BE THE APPLICABLE "LEGAL" ANSWER.

NOT — some conjecture which the law court supposed Mr. Cassidy (quote) "SHOULD" have viewed, or intended that the Maine intestate statute — "MIGHT" provide.

(If he "as though" had intended to die (43) years after he ACTUALLY DIED.)

*** NO PROOF OF THIS EXISTS ***

Without the presumptive word "SHOULD" only the (quote) "LEGAL EFFECT" continues "NOW", to be APPLICABLE.

Certainly I have reserved my CLASS RIGHT which "the eyes of the applicable intestate law" (and the probate laws) of the State of Maine required; — at all times:

Namely:

and forever (quote) "IN INFINITUM"
(Hunt vs. Hunt) etc.

Please see Goodwins Estate (1952) 147 Me. 237,
(86 A. 2nd 88)

(quote) *" — The rights of DESENT flow from the LEGAL status of the parties, and where the status is fixed, the LAW supplies the rules of DESCENT, with reference to the situation as it existed at the death of the decedent."*

(*Mr. Cassidy said "the same manner" as FIXED BY THE LAWS OF MAINE*)

Please NOTE:

4 M.R.S.A. Sec. 7;

(quote) *"The Supreme Judicial Court may Exercise its jurisdiction according to the common law NOT INCONSISTENT with the Constitution, or any STATUTE".*

"It may issue all writs and process, NOT within the EXCLUSIVE jurisdiction of the Superior Court, necessary for the furtherence of justice on the execution of the LAWS, in the name of the State."

The Supreme Judicial Court is ONLY permitted to interpret the laws AS ENACTED by the Legislature and determine if they are within CONSTITUTIONAL requirements, or have been PROPERLY APPLIED in the case before the Supreme Judicial Court.

A want of JURISDICTION IS FATAL, in every stage of cause and *ALWAYS* OPEN FOR CONSIDERATION BY COURT.

Stinson vs. Taylor (1941)
137 Me. 332
(17 A. 2nd 700)
Hutchins vs. Hutchins
136 Me. 513
(4 A. 2nd 679)

Exparte Smith (1950)
145 Me. 174
(74 A. 2nd 225)

State vs. King
(135 Me. p. 17 - 18)

The case of Murray vs. Sullivan exists as a LEGAL NUL-

HOW CAN THE LAW COURT, — ** GET PAST, THE SUPREME COURT OF PROBATE, WITH THE FACT: THAT —

(quote) *"it would be INCONGRUOUS TO PERMIT the (intestate) statute to operate — ".*
Murray vs. Sullivan
(158 Me. at p. 107)

THIS IS NOT A
"PROBATE" FACT

IT IS NOT A
"LEGISLATIVE" FACT

IT IS NOT A
"LEGAL" FACT

WHICH BRANCH OF MAINE GOVERNMENT HAS AUTHORITY TO MAKE SUCH A PRESUMPTION —? THE LEGISLATURE OR THE JUDICIAL?

ARGUMENT

No Appeal, from the court of original jurisdiction has never been taken.

****

A CASE, IN POINT IS:

As stated in Cutting vs. Tilton 188 Me. 91 (106 Atl. 113);

(quote) *"Courts of Probate are wholly creates of statute".*

"While provision is made by statute for appeal from Probate Court of ORIGINAL JURISDICTION to Supreme Court of Probate. IT IS SIGNIFICANT THAT NO PROVISION IS MADE FOR ANY APPEAL FROM THE SUPREME COURT OF PROBATE ITSELF AN APPELLATE COURT, TO THE LAW COURT".

(M.R.S. Chap. 67, Sec.31) (1919)

(quote) *"an appeal from an appellate court would be somewhat anomalous and such proceeding, — cannot be presumed as ALLOWABLE practice".*

FOR A "LAW" COURT TO ASSUME "ORIGINAL" JURISDICTION — AND BY-PASS FACTS FOUND AND ESTABLISHED IN TWO PROBATE COURTS; (AND AGREED TO BY ALL PARTIES) — ANY FURTHER INQUIRY WAS CONFINED TO MATTERS OF LAW.

(quote) *"If there was any evidence, its sufficency was a question of FACT upon which the finding of the (PROBATE) Court is CONCLUSIVE, NOT TO BE REVIEWED BY LAW COURT".*

Cutting vs. Tilton Eacott Appellant
118 Me. at page 94 (95 Me. 522)
(My Emphasis)

HOWEVER:

Under Section; #5961.

(quote) *"When proceeding under this Chapter (707) involves the determination of an ISSUE OF FACT, such issue may be tried and determined in the same manner as issues of FACT are tried and determined in other civil actions in the COURT in which the proceeding IS PENDING".*

M.R.S.A. (1954), C. 707, — Sec. 46) — (Please see, Dyer Brief to Law Court, for Review: — Jan. 15, 1974, at page #6 and 18, 19-20.

SURELY, — IF MR. CASSIDY,

(quote) *"SHOULD" have viewed all of his own LINEAL DESCENDANTS — (as though he DIED (43) years after his actual death date: — HE MADE NO MENTION OF IT IN HIS WILL.*

THIS "NEW" DEATH DATE PRESUMPTION: — IS A CRITICAL MATERIAL FACT OF SUCH VITAL IMPORTANCE, THAT A RIGHT OF APPEAL CANNOT BE DENIED (whether or not, the Law Court, could or could not review, or create such an "original" FACT.

The PRESUMPTION

CONSTITUTES

ERROR OF LAW; —

WHICH IS SO UNCONSTITUTIONAL

THAT: Murray vs. Sullivan

CAN ONLY BE

A "LEGAL NULLITY".

THIS IS WHAT I WANT:

(quote) *"It is entirely within the province of the Legislature to determine who shall and who shall not take the estate, and the PROPORTION in which they may take, and whether severally, or as joint tenants, per capita, or, PER STIRPES. In the absence of CONSTITUTIONAL prohibition, the LEGISLATURE is supreme, and may dispose of an INTESTATE decedent's estate after payments of his debts to ANY CLASS OR CLASSES OF his kindred, to the exclusion of any class, or CLASSES".*

(State vs. Hamlin
86 Me. at page 505)
(My Emphasis)

OBVIOUSLY:

The statute is applicable only to a CLASS, or, CLASSES.

Obviously; — what ever the Maine Law Court "thinks" Mr. Cassidy should have intended: — the statute must be applied to an IMMEDIATE CLASS (and/or) TO A "MEDIATE" CLASS.

TWO (2), classes did exist, at the time of his death.

(Cassidy vs. Murray 144 Me. 326)

Under 4 M.R.S.A. Sec. 57,

(quote) *"The following cases ONLY come before the court as a COURT OF LAW. Cases on appeal FROM the Superior Court — questions of LAW arising on REPORT of cases, including civil cases, INTERLOCUTORY orders on rulings of such importance as to require the opinion of the justice, review by the law court BEFORE any further proceedings in the action: — etc."*

"Whenever, in the opinion of the law court, the ENDS OF JUSTICE REQUIRE, it may remand any case to the court BELOW or any justice thereof for the correction of any errors in pleading or PROCEEDURE."

The Law Court has *NO* supervisory jurisdiction over INFERIOR COURTS, (or, Probate Courts) such jurisdiction being vested in the Supreme Judicial Court sitting at nisi prius, since the Law Court is A COURT OF REVIEW, AND *NOT OF "ORIGINAL" JURISDICTION* AND "CANNOT" EXTEND ITS STATUTORY POWERS.

Edwards Appellant (1945)
141 Me. 219
(41 A. 2nd 825)

Supreme Judicial Court sitting as a court of LAW, "IS NOT" authorized by any general statute to ISSUE PROCESS in aid of its JURISDICTION.

One ANOMALY, which makes Murray vs. Sullivan VOID:

Is that the Law Court HAS CREATED ITS OWN "NEW" FACTS; which preclude the conclusiveness of the facts presented to the Law Court, by the "ORIGINAL" and "SUPREME" probate courts, THESE FACTS WERE:

(quote) *"NOT TO BE REVIEWED BY LAW COURT"* (Cutting vs. Tilton) (supra)

"A NOT ALLOWABLE PRACTICE"

I have constantly and continuously requested relief from every available court with competent jurisdiction to grant relief. It is my contention that "orginale" and "final" jurisdiction must rest in the Probate Courts.

(R. 4, to R. 23)

But the probate courts allege INFERIOR jurisdiction (R. 22) and the Law Court has again denied me the opportunity for appeal, or relief, or remand.

(Re: Estate of John Cassidy) (supra)
(Dyer Review Brief Jan. 15, 1974 at page 15 to 25)

14 M.R.S.A. Sec. 5960 to 5063 — provides relief whenever necessary, by a court HAVING JURISDICTION to grant relief where rights have been adjudicated by a declaratory judgment.

In the Case of State vs. Hamlin 86 Me. at page 506.

(quote) *"Our statute of Wills authorizes certain persons to make wills, and prescribe the mode of their execution.*

At page 507 (supra)

The act, section 12, provides for an appraisal of the estate subject to the exercise, upon application to the PROBATE COURT. The probate court having JURISDICTION of the settlement of the estate, IS AUTHORIZED to, "hear and determine all questions in relation to said tax that may arise," etc. — "subject to APPEAL as in other cases".

"These provisions fully secure the RIGHTS of all parties interested, and satisfy the requirement of "DUE PROCESS OF LAW". The act applies equally to citizens of this and other states, and therefore is not in conflict with any provision of the FOURTEENTH AMENDMENT, that, "NO STATE SHALL make or ENFORCE any law which shall abridge the privileges or immunities of CITIZENS of the United States".

State vs. Hamlin (Supra)

(My Emphasis)

THEREFORE THE SIGNIFICANT AND MANDATORY FACT THAT THE CASSIDY ESTATE WAS "PROBATED", (April 1918), (AND THAT *NO* TIMELY APPEAL OF THE FACTS OR SUBJECT MATTER WAS MADE) — certainly precludes, any "NEW" DEATH DATE PROBATE PROCEEDURE.

(Please see page 1, Dyer Brief to Maine Law Court, (1973): — and (R. 126 to 140) — (R. 380) — (R. 244 to R. 253).

****

In the (Estate of Cassidy) case (1974) — at page 439; — the Maine Law Court supplied the incriminating (quote) "LEGAL" proof; — that whatever the Court presumed Mr. Cassidy "SHOULD" have intended, — is NOT "res judicata;" — in fact, the Court should not have given any "HEED" to what Mr. Cassidy (quote) "MIGHT" or "SHOULD" have intended. IT WAS THE (quote) "LEGAL EFFECT", OF WHAT HE ACTUALLY SAID, WHICH IS APPLICABLE.

Therefore there is no rational or legal reason WHY: any person who continues to qualify as a DIRECT MEDIATE CLASS survivor, can not have performed that which CONSTITUTIONAL law requires;

***because the mediate class, is NO LONGER "out trusted", and a whole statutory class cannot LEGALLY be OMITTED FROM THE APPLICATION OF THE INTESTATE STATUTE.

The Law Court, has done a "de novo" a probate (equity) appeal; — FOR the "Supreme" Court of Probate, — "without right of appeal". — ! (IMPOSSIBLE) !!!!!!!

A right of appeal is missing.

A proceedural step is missing.

A "SUPREME" LAW COURT, has not only taken "ORIGINAL" jurisdiction; — it has told a "SUPREME" PROBATE COURT, how it must write a "NEW" decree.

A law Court refuses to remand and denies everything as "res judicata". A probate court admits it is hopelessly (quote) "INFERIOR to the Law Court".

A CONFLICT OF JURISDICTIONS EXIST.

If the Cassidy will did not have inherent, a LEGAL REMEDY: — or if the will appeared to be void for vagueness; — the Legislative branch of Maine government PRECLUDES (any court) from creating a (quote) "NEW

CLASS" — (158 Me. at p. 102) or a "FUTURE LEGISLATIVE METHOD" — (158 Me. at p. 108) so that remote claimants, may be permitted "special privileges" (as intestate claimants who cannot qualify) as either DIRECT "IMMEDIATE" (and/or) DIRECT "MEDIATE" CLASS CLAIMANTS.

THE WHOLE CONCEPT BY-PASSES, — EVERYTHING PRIOR; — EVEN THAT WHICH THE LEGISLATURE INTENDS TO PREVENT.

I am aware that a new line of cases — have been appearing which attempt to CONSTRUE "Judicial" law (instead of Legislative law) , — in a manner of descent, which testators "SHOULD" HAVE INTENDED; for intestate statutes to provide. During this "Watergate" era; a judicial branch of government, — should not have unlimited power to infringe upon a legislature's INTENT and PUBLIC POLICY.

In large estates, where the opportunity to sway a case to the "right", or to the "left", — is involved, the OBVIOUS LEGISLATIVE MANDATE OF A STATUTE, SHOULD BE REQUIRED TO PREVAIL OVER "PRESUMED" CONSTRUCTION: — in the interest of constitutional justice, if nothing more.

Questions: —

This Appeal, re: Estate of Cassidy 313 A. 2nd 435; — frankly asks;

> Can a LAW COURT, RE-PROBATE an estate; (which was ONCE probated and not timely appealed)? CAN the inexorable MANNER of the Maine INTESTATE STATUTE, (43) years AFTER any Maine citizen's death, OMIT THE "MEDIATE CLASS", — when, "in esse"? Does the statute have a continuing prospective effect, on the basis of the FACTS and SUBJECT MATTER as found, proved, and certified (by the Probate Court of ORIGINAL JURISDICTION; — and as presented to a Law Court, re: a (quote) "question FOR LAW?

****

How can a law court create new "subject matter" for a probate court, and force people into a "CLASS" that does not LEGALLY EXIST — ?

(Colonial Bank vs. Stevens
316 A. 2nd 768)

In brief: —

Mr. Cassidy died on March 25, 1918. — The Law Court said in Murray vs. Sullivan 158 Me. at p. 102, that he (quote) "SHOULD" have viewed his lineal descendants as

a NEW CLASS, ("restricted only by the limitations fixed by the incorporated statute").

(quote) *"AS THOUGH, the testator's death occurred immediately AFTER the death of his LAST SURVIVING Child".*

And, the statute (quote) "MUST be so applied".

(ipse dixit)

Thus; according to the Law Court:

The facts as presented by the Supreme Court of Probate, and the Probate Court of ORIGINAL jurisdiction, (inferior courts to the Law Court) — (R. 22) — have no jurisdiction; except to allow the Law Court to REPROBATE the Cassidy Estate, — (43) years after Mr. Cassidy's death; — "AS THOUGH" he then DIED.

****

RESEARCH: —

In all of my research, I have not found a case, more to the point, than a recent Connecticut case.

(Colonial Bank vs. Stevens
316 A. 2nd 768)

****

Question, (g) in the case of Colonial Bank (supra) seems to be appropriately addressed to my Appeal. And, at page 775, of Colonial (supra) (para. (6) states):

(quote) *"A construction of a will which will avoid intestacy is to be sought".*

****

BUT, Mr. Cassidy STIPULATED INTESTACY! —

(quote) *"IN THE SAME MANNER" — — "PROVIDED BY THE THEN EXISTING LAWS OF THE STATE OF MAINE FOR THE DESCENT AMONG (HIS) LINEAL DESCENDANTS OF (HIS) INTESTATE PROPERTY — ".* (158 Me. at p.)

The first part of his will, represented a TRUST for his children's lives:

The second part of his Will, — LET THE LAW THEN TAKE ITS COURSE.

The Colonial case (Supra) plainly states:

(quote)

***"*But we cannot RE-WRITE the will of the testator nor can we SUPPLY a dispositive provision which a will has OMITTED.*

*A construction plainly REQUIRED by the terms of a will CANNOT BE AVOIDED because it leads to INTESTACY".****

THE INTESTATE MANNER, REQUIRED in the Colonial case: — is the "SAME MANNER" which Mr. Cassidy specified.

The Maine Law Court in (Estate of Cassidy) plainly admits: at page 439, that:

(quote) *It could give no heed to what he MIGHT or SHOULD have said".*

When Mr. Cassidy "SHOULD" have intended to DIE, — or when his estate "SHOULD" have been PROBATED, — is not only VOID; — it is UNCONSTITUTIONAL. It denies due process. It denies a direct "per stirpes" CLASS survivorship rights and the "EQUAL" protection of Maine law, to take (as required by the intestate statute) "BY RIGHT OF REPRESENTATION." (158 Me. at p. 100)

The FACT that I directly survived Mr. Cassidy, as a MEDIATE CLASS CLAIMANT is not ELUDABLE; — if constitutional law has any significance.

The constitutionality of a stutute cannot generally be questioned. (Constitutional Law, Key 32. (2))

Statutory law, is public policy, designed by legislature to promote the public interest.

A judicial determination of WHEN and HOW any man's intestate property "SHOULD" be distributed under the (quote) "same manner" of the State's "public policy"; becomes automatically a matter of public interest; — which draws into question the constitutionality of the state's LEGISLATIVE INTENT.

This Appeal: (Estate of Cassidy) draws into consideration critical statutory probate law which is significantly essential.

For example: —

Title 4 M.R.S.A. Sec. 251, Mandates that Probate Courts:

(quote) " — *may take the probate of wills — on the estates of all DECEASED persons, who AT THE TIME OF THEIR DEATH were inhabitants of his county — died leaving estate to be administered in his county, or whose estate is afterwards found therein; and HAS JURISDICTION of all matters relating to the settlement of such estates*".

(Probate Courts have an ORIGINAL *jurisdiction in probate measures that is EXCLUSIVE).

*Petition of Kimball (1946)
142 Me. 182 (My Emphasis)
(49 A. 2nd 70)

*(The Supreme Judicial Court, sitting in EQUITY cannot establish an UNPROBATED will. — and any party claiming relief under such a will MUST FIRST PROBE IT in the probate court.)

Cousins vs. Advent Church

93 Me. 292
45 A. 43

SURELY NO TIMELY EQUITY APPEAL EXISTED, (in

the Cassidy situation) — HOWEVER, — in any event an appellate probate court had to first "PROBE" it in the probate court; — NOT, A LAW COURT.

*(If in Law there is no jurisdiction, parties may NOT WAIVE jurisdiction).

Legualt vs. Levesque
150 Me. 192
(107 A. 2nd 493)

Hutchins vs. Hutchins
141 Me. 183
(41 A. 2nd 612)

(Wills do NOT become operative until proved and established by court of probate, or APPELLATE Supreme Court of Probate.

Appeal of Martin
133 Me. 422
(179 A. 655)

AS PLAINLY STATED: (in Neely's Estate) — Decrees of probate courts in matters of probate, within the authority confirmed upon then by law, ARE, when NOT APPEALED FROM, CONCLUSIVE and are binding upon the common law courts, and NOT REVERSABLE by writ of error or certiorari nor can they be SET ASIDE IN EQUITY even for fraud.

However: —

> The probate court AFTER time for appealing from the decree has PASSED, had the power, upon petition SUBSEQUENTLY filed, notice, and hearing, to OPEN and VACATE A PRIOR decree which is CLEARLY SHOWN TO BE WITHOUT FOUNDATION IN LAW, OR FACT, and derogation of LEGAL RIGHT.
>
> Neeley's Estate (1938)
> 136 Me. 79
> (1 A. 2nd 772)

(THIS, I HAVE ATTEMPTED IN, (Estate of Cassidy 313 A. 2nd 435)

THIS IS ONE OF THE ISSUES WHICH the case of (Estate of Cassidy) (supra) —, bottoms out upon. Because NO EVIDENCE ever existed, to clearly show that the ORIGINAL PROBATE JURISDICTION, (PRIOR TO "Murray vs. Sullivan") was without foundation in LAW, or FACT, or in "legal" right.

> (I claim res judicata "a la", the original (unappealed) jurisdiction of the probate court. — prior to the Murray vs. Sullivan case).

The Law Court, plainly states:

In re: Estate of Cassidy
313 A. 2nd 435, (2) at page 338.

(quote) *"14 M.R.S.A. Sec. 6051 (10) confers on the Superior Court JURISDICTION to grant appropriate equitable relief in matters relating to the construction of wills".*

(quote) *"We hold that the Superior Court had jurisdiction to enter to its PRIOR decree of distribution".*

BUT: THE APPELLANT HERE-IN HOLDS THAT THE WORDS, "CONCURRENT JURISDICTION" —: DOES NOT MEAN "EXCLUSIVE" OR FINAL JURISDICTION to create "ORIGINAL" JURISDICTION . . . ! (for that would negative the right to resort to the law court) (the lower court has original FINAL jurisdiction; — subject only to a timely appeal to a court of equity.

Norris vs. Moody (1921)
120 Me. 151
(113 A. 24)

14 M.R.S.A. Sec. 6051, (13): — plainly states re: Equity Jurisdiction, that equity courts:

(quote) *" — have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is NOT a plain, ADEQUATE and complete remedy at LAW".*

IF THE LEGISLATURE'S STATUTE IS NOT APPLIED AS:

(quote) " — *a plain ADEQUATE and complete remedy at LAW;*"

— the Cassidy Will would have to be VOID FOR APPLICABILITY, (or vagueness).

However Law Court ADMITS: —

(quote) *"This Court in Murray vs. Sullivan examined, discussed, and DETERMINED THE LEGAL effect of what Mr. Cassidy said".* (Estate of Cassidy) (supra)

"It could give NO HEED to what he MIGHT or SHOULD have said".

When this Honorable Court said that: — It said just exactly what it should have said in Murray vs. Sullivan (supra), and exactly what the Probate Court should have said in Estate of Cassidy.

THE "LEGAL" EFFECT: (of what he actually said) — — IS — —

(quote) *"A PLAIN ADEQUATE AND COMPLETE REMEDY AT LAW". (The applicable media is the message!*

The testamentary doctrine of heirs, who take "INSTEAD OF" SURVIVORS; — is contra-indicative of the doctrine of INTESTATE heirs, who LEGALLY MUST TAKE "UNDER" and ancestor; — instead of "through",

a survivor. See: — Strout vs. Chesley (125 Me. at p. 125)

Mr. Cassidy did not NAME any person or class; — he let the LAW take its "SAME" (LEGAL) COURSE.

Therefore all of his "lineal" claimants (under the "applicable" statute) are restricted by law, to take UNDER an heir, — and not INSTEAD of an heir.

In, the case of Murray vs. Sullivan, the claimants take incongruously, — "INSTEAD OF" the direct ancestors: *including* the Appellant herein who IS A DIRECT DESCENDANT; — not a remote descendant.

It is to be noted: That the "applicable" statute contemplates ONLY (2) CLASSES of DIRECT SURVIVORS; —

(1) "IMMEDIATE" CLASS
and
(2) "MEDIATE" CLASS

Note: under the "applicable" statute:

When all heirs are of one class; distribution is said to be "per capita". When two (2) classes are present, (in esse) the distribution is "per stirpes", (by steps).

WHEN IMMEDIATE CLASS SURVIVORS (die before

final distribution) and are survived by issue; — the issue takes by substitution "UNDER", the intent of the LAW.

Obviously, a direct MEDIATE CLASS survivor can not take "under" a survivor.

Legally the issue (of a child who "pre" — deceased the intestate) IS REQUIRED BY LAW, TO TAKE "DIRECTLY" FROM THE DECEASED INTESTATE.

Final distribution, may be made one day, or one year, or (43) years, after a man dies intestate.

Rational, legal application, is often confused with a multitude of "future interest" estates; which primarily concern NAMED" PERSONS.

Such as:

"to my wife for life estate, (etc.) — and upon her decease to my brother GEORGE, (life estate, etc.) — and THEN to "MY" heirs: —??"

Such a situation; involves the grantor's COLLATERAL lineal descendants: who have to be "George's" survivors at the time of GEORGE'S DEATH, and not at the time of the grantor's death.

Future Interests
are generally
testamentary: —
a "LEGAL" estate
(by operation of law)
has no place to
go: — EXCEPT
AS INTESTATE
PROPERTY.

**** (as in the Cassidy
situation) ******

THE MAINE LAW COURT WANTS FOR (legislative) JURISDICTION: — BECAUSE IT WILL NOT APPLY THE (quote) "APPLICABLE" INTESTATE STATUTE:

(quote) " — *it would be INCONGRUOUS to PERMIT the statute to operate* — "

WHY —? Is the statute void, or unconstitutional? As quoted; — under Title 4, M.R.S.A. 49, (Chap. I)

"Supreme Judicial Court cannot assume nor infer a FACT not agreed upon by the parties"

Levesque vs. Nanny
142 Me. 390
53 A. 2nd 703

"Classification by the (Maine) LEGISLATURE was expressed as valid, IF ANY STATE OF REASONABLE FACTS, can be conceived to sustain it".

Maine vs. King
(135 Me. p. 17018)

"The statute fixes its own rules" — and by these rules we must be governed.

Messer vs. Jones
88 Me. 383

That which the legislature seeks to prevent is the intent of the law.

106 Me. 209
135 Me. at p. 18

As stated: in Nathan vs. Martin, 317 A. 2nd 110; — Equity and LAW should not be placed in position of competing for litigation.

(quote) *"our judicial system does not enjoy such luxury".*

(quote) *"We have no more right to decline the exercise of JURISDICTION which is given, than to USURP that which is NOT GIVEN".*

Opinion of Justices
70 Me. 598

CONCLUSION:

The meaning and legal force of the case of Cutting vs. Tilton 188 Me. 91, (106 A. 113) conclusively proves why the Maine Law Court's review of all prior probate precess, proceedure, facts, subject matter and essential law: — WAS NOT REVIEWABLE — AND, NOT ALLOWABLE (CONSTITUTIONAL) PRACTICE.

The Law Court's construction of how Mr. Cassidy (quote) "SHOULD" have viewed his "LINEAL" descendants, (in the eyes of the applicable intestate statute) — " AS THOUGH" he died (43) years after he actually died: — IS NOW ADMITTED by the Maine Law Court, in the case of (Estate of John Cassidy, at page 439) — that the Court (quote) " — COULD GIVE NO HEED TO WHAT HE MIGHT OR SHOULD HAVE SAID":

*** IS CONCLUSIVE.

The humble (and perhaps humiliating) fact is: — that the Maine Law Court HAS PRACTICED exactly that, which it had NO JURISDICTION TO REVIEW; and SHOULD "NOT" HAVE DONE.

The case of Murray vs. Sullivan exists is a LEGAL NULLITY, — contrary to the best interests of Justice, and constitutional public policy.

It is not for me to further state what SUPERVISION this Honorable Supreme Court of the United States may wish to decree: — but surely JUSTICE HAS NOT BEEN DONE: — A REMEDY IS RESPECTFULLY REQUESTED.

A decision which is unconstitutional is "mallum prohibitum", from the beginning and cannot improve with time.

While your appellant is not familiar with the intricate rules and proceedures of this Honorable Court, I plead for a liberal understanding and tolerance.

And that the Court will order such other and further relief in this case as this Honorable Court may deem proper.

The Appellant will be represented at all hearings by legal counsel, who will be prepared to present to the Court all subject matter and Court requirements. Failing to do so, I would rely upon my briefs.

Therefore, if it pleases this Honorable Court, I move that my Appeal (not necessarily for certiorari) be given opportunity for hearing.

Edythe L. Dyer (pro se)
c/o 61 State Street
Bangor, Maine (04401)
May 4 , 1974

STATUTES

Title 14 M.R.S.A. Sec. 5960-5963
M.R.S. (1954) Chap. 170, Sec. I, Sub. sec. II
28 U.S.C. Sec. 2430
Title 18 M.R.S.A. 1551 (Chap. 205)
Title 4 M.R.S.A. Sec. 401
Title 4 M.R.S.A. Sec. 203-251
Title 4 M.R.S.A. Sec. 403-406
Title 4 M.R.S.A. Sec. 7
Title 4 M.R.S.A. Sec. 57
Title 4 M.R.S.A. Sec 49 (Chap. #1)
M.R.S. Chap. 67, Sec. 31, (1919)
14 M.R.S.A. Sec. 6051 (10)

RULES

Rule 15 and 19	U.S.C.
Rule 15(e)	U.S.C.
Rule 33, — (b)	U.S.C.
Rule 52	M.R.C.P. AT P. 216

CASES

Appeal of Martin	133 Me. 422 179 A. 655
Bray vs. Spencer	146 Me. 416 (Me.) 1951
Estate of John Cassidy	313 A. 2nd 435 (Me.) 1974
Cassidy vs. Murray	144 Me. 326
Colonial Bank vs. Stevens	316 A. 2nd 768
Curins vs. Advent Church	93 Me. 292 45 A. 43
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Dodge vs. Dodge	113 Me. p. 158
Eacott Aplt.	95 Me. at p. 526
Edwards Appellant	141 Me. 219 (1945) — (41 A. 2nd 825)
Exparte Smith	145 Me. 174 (74 A. 2nd 225)
Hammond vs. Street	106 Me. at p. 213
Hunt vs. Hunt	37 Me. at p. 343
Hutchins vs. Hutchins	141 Me. 183 (41 A. 2nd 612)
* Am. Jur.	(page 336) 287 U.S. I
Johnson vs. Stetson	159 Me. at p. 44
Legualt vs. Levesque	150 Me. 192 107 A. 2nd 493

Maine vs. King	135 Me. p. 17-18
McKay vs. McInness	279 U.S. 820 49 S. Ct. 34
Messer vs. Jones	88 Me. 383
Morse vs. Hayden	82 Me. at p. 230
Murray vs. Sullivan	158 Me. 98 179 A. 2nd 307 (1962)
National Neward vs. Hart	309 A. 2nd 512 (Me.) 1973
Neely's Estate	136 M. 79 1 A. 2nd 779
Norris vs. Moody	120 Me. 151 (1921) (113 A. 24)
Opinion of Justice	70 Me. 598
Petition of Kimbal	142 Me. 182 (1946) (49 A. 2nd 70)
Roukos Estate	141 Me. at p. 83
Salisbury vs. State	300 A. 2nd 367 (Md.) 1973
State vs. Hamlin	86 Me. at p. 505
State vs. Mitchell	97 Me. at p. 70
Stinson vs. Taylor	137 Me. 332 17 A. 2nd 700
Strauder vs. West Virginia	100 U.S. 303
Strout vs. Chesley	125 Me. at p. 125
U.S. vs. Kreider	313 U.S. 443
Walker vs. Flynn	Docket #6484, Penobscot County Superior Court
Zucht vs. King	260 U.S. 174-177 135 Me. at 18

Date Opinion Filed
December 26, 1973

Reporter of Decisions
Docket No. 992
Law Docket No. PEN. -73-5

EDYTHE L. RICE DYER, Appellant

APPEAL FROM DECREE

OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY

DELAHANTY, J.

John Cassidy executed his will on February 21, 1906. He created a trust therein for the benefit of his five children and their lineal descendants which should endure until the death of his last surviving child. The testator died on March 25, 1918, leaving no widow and survived by four of his children and a grandchild, Edythe L. Rice Dyer, the appellant in this proceeding. The will was duly admitted to probate. The testamentary trust terminated upon the death of John Cassidy's last surviving daughter, Lucy, on January 9, 1961. The lineal descendants of the testator John Cassidy, in the nearest degree then comprised of six grandchildren.

A substantial estate had accumulated under the trust and its proper disposition was in dispute. On June 21, 1961, the trustee under the will petitioned by way of a declaratory judgment action in the Superior Court for Penobscot County for instructions relating to the making of a final distribution of the assets of the trust. By consent of all of the parties and upon an agreed statement of fact and issue, the case was reported by the Superior Court directly to this Court. By its opinion dated March 25, 1962, this Court decided the issue. Murray vs. Sullivan, 158 Me. 98, 179 A. 2nd 307 (1962).

Pursuant to the mandate in Murray (supra), the Superior Court for the County of Penobscot ordered, inter alia, final distribution. The trust estate was closed and the trustee discharged.

Thereafter, the appellant commenced a series of post judgment proceedings cataloged, in part, as follows:

June 19, 1962	Petition for review; Supreme Judicial Court of Maine; denied.
January 7, 1963	Petition for certiorari; 371 U.S. 949, 83 S. Ct. 501, 9 L.Ed. 2nd 497 (1963); denied.

April 29, 1963	Motion for leave to file petition for rehearing; 373 U.S. 905, 83 S. Ct. 1288, 10 L.Ed. 2nd 201 (1963); denied.
October 21, 1963	Motion for leave to file petition for rehearing; 375 U.S. 892, 84 S. Ct. 143, 11 L.Ed. 2nd 122 (1963); denied.
February 17, 1964	Motion for leave to file petition for rehearing; 376 U.S. 928, 84 S. Ct. 655, 11 L.Ed. 2nd 627 (1964); denied.
March 8, 1965	Petition for certiorari; 380 U.S. 932, 85 S. Ct. 938, 13 L.Ed. 2nd 821 (1965); denied.
April 26, 1965	Petition for rehearing; 380 U.S. 989, 85 S. Ct. 1329, 14 L.Ed. 2nd 282 (1965); denied.

The matter presently in controversy was commenced by way of petition filed by the plaintiff in the Probate Court, Penobscot County and therein treated as an action for a declaratory judgment. After appropriate notice to all parties in interest, formal hearing took place. The principal pleading signed by the plaintiff here was filed pro se. By special leave of the Probate Court, the appellee's husband, a layman, was permitted without objection to present her case in the Probate Court. On October 16, 1969, the Judge of Probate granted defendant's motion to dismiss the complaint and the plaintiff appealed to the Superior Court sitting as the Supreme Court of Probate. The appeal was challenged by the appellee's motion to dismiss. The Supreme Court of Probate allowed by its order that it would "treat the motion as a motion for judgment on the pleadings rather than rely on more narrow grounds of sufficiency of the 'appeal and reasons for appeal.' " The Justice below acting as the Supreme Court of Probate affirmed the decree of the Probate Court and dismissed the appellant's "petition." From this dismissal, the plaintiff appeals. We deny the appeal.

The doctrine of res judicata is determinative of the question before the Court as it relates both to the question of jurisdiction of the Superior Court and to the construction of a will.

I. *Jurisdiction of Superior Court:*

The plaintiff now seeks an adjudication of the same cause of action previously litigated in Murray (supra). The prior proceeding was by the trustee seeking instructions as to the final distribution of the estate trust. The trustee commenced his action in Superior Court pursuant to 14 M.R.S.A. §5956 (3) and § 6051 (10),

> *"The Superior Court shall have jurisdiction to grant appropriate equitable relief in the following cases:*
>
> *"10. To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust and the expediency of making changes and investments of property held in trust."*

The issue there presented (method of the trust distribution) was appropriately reported to this Court. That the Supreme Judicial Court has jurisdiction of actions reported to it wherein trustees under will seek instructions as to the distribution of the trust fund is without doubt. M.R.C.P. 72 (b); Maine National Bank vs. Petrlik, Me., 283 A. 2nd 660 (1971). The issues were resolved and "remanded to the Superior Court for an order for judgment. . . ." The trust corpus was then distributed among the trust beneficiaries and the trustee was dismissed of his duties.

The form of the present action is one for declaratory judgment for the construction of a will by employing the equity jurisdiction of the Probate Court under 4 M.R.S.A. §252:

"The courts of probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased persons, to wills and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought."

While her position is inarticulately postured, it is evident that the plaintiff seeks a redetermination of the trust previously construed by this Court in Murray (supra). Her position bottoms itself upon the claimed proposition that the Probate Court is the only court of original jurisdiction authorized to enter a decree directing distribution of a trust. Her position incorrectly states the law of this State.

14 M.R.S.A §6051 (10) confers on the Superior Court jurisdiction to grant appropriate equitable relief in matters relating to the construction of wills. 14 M.R.S.A. §6051 (10) supra; Hichborn vs. Bradbury, 111 Me. 519, 90 A. 325 (1914); Cady vs. Tuttle, 127 Me. 104, 141 A. 188 (1928). Such equitable jurisdiction is shared by the Probate Courts when by virtue of 4 M.R.S.A. §252, supra, courts of probate shall have jurisdiction in equity concurrent with the Superior Court in construction of wills.

Concurrent jurisdiction means joint and equal jurisdiction. State vs. Sinnott et al, 89 Me. 41, 35 A. 1007 (1896); Huston vs. Dodge, 111 Me. 246, 88 A. 888 (1913); Norris vs. Moody, 120 Me. 151, 113 A. 24 (1921); Strout vs. Chesley, 125 Me. 171, 132 A. 211 (1926); Eastern Maine General Hospital et al vs. W. Harrison et al, 135 Me. 190, 193 A. 246 (1937).

We hold that the Superior Court had jurisdiction to enter its prior decree of distribution.

II. *Finality of Will Construction:*

In a trustee's action for construction of testamentary trust and for instruction, all persons interested in the sub-

ject matter are required to be parties. Hawes vs. Bragdon, 66 Me. 534 (1877); McGilvery vs. McGilvery, 152 Me. 93, 123 A. 2nd 777 (1956); Hitch vs. Hitch, Me., 261 A. 2nd 858 (1970).

Plaintiff here was a party to Murray (supra) and obligated to litigate all issues.

When a court acts within its assigned capacity in the construction of a trust (under a will), that matter cannot be legitimately relitigated between the parties.

> *"A decree contruing the will and determining the rights of the parties, if rendered by a court of competent jurisdiction, is binding upon all parties to the suit unless attacked directly by appeal or error. . . . " 4 Bowe-Parker: Page on Wills §31.12. See also 96 C.J.S. §1094 (c).*
>
> *" . . . Public policy and the interest of litigants alike require that there be an end to litigation which, without the doctrine of res judicata, would be endless. The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. The doctrine of res judicata not only puts an end to strife, but produces certainty as to individual rights and gives dignity and respect to judicial proceedings." Willette vs. Umhoeffer (supra).*

On remand the decree of the Superior Court acting within its competent jurisdiction in construing the Cassidy estate trust and determining the interest of the parties therein, being all the trust beneficiaries, is binding upon all parties unless successfully attacked directly on appeal. The issue cannot be relitigated to the harassment and vexation of an opponent. Conclusiveness in the construction of wills is a necessary element in the courts' supervision of estate administration.

In North vs. Harris, 126 Me. 371, 138 A. 564 (1927), plaintiffs asked for construction of a will claiming that the testamentary trust did not terminate upon the death of the testator's last son, but rather still continued for their benefit. The Law Court determined that the trust had, in fact, ended and the corpus was "divested of the trust" and therefor the plaintiffs had no interest to ask the equity court to construe the will.

Equity will not assume jurisdiction of a bill for the construcion of a will where any doubt as to the meaning of the language of the will should have been removed by previous decisions.

> *"It should be said, however, that the court will not feel itself bound to answer all questions which can possibly be asked by a devisee. It must appear that the language of the will is such that the parties may reasonably have doubts concerning its true construction. Other parties should not be subjected to the trouble and expense of appearing in court, or the possible hazard of not appearing, in cases where there is no doubt." Haseltine vs. Shepherd, 99 Me. 495, 504, 59 A. 1025, 1029 (1905).*

By this proceeding and successive post judgment attacks on Murray (supra), the plaintiff makes quite clear her intention to ignore the substance and validity of that decision. Dissatisfaction with her share of the trust estate is evident where she agrues that "The Supreme Judicial Court of Maine should overrule its interpretation made in Murray vs. Sullivan, supra (1962) — of what John Cassidy 'should' have intended when he executed his will in 1906." (Sic.) This Court in *Murray* examined, discussed, and determined the legal effect of what John Cassidy said. It could give no heed to what he might or "should" have said. It is a rare testator who will dispose of his worldly goods to the full satisfaction of anticipating relatives. The competing and conflicting interests make full satisfaction well nigh impossible leading one to realize that "The man who wants to make an entirely reasonable will dies intestate."2

While the defendants beseech this Court to deny plaintiff's appeal, they seek further a remand of this action to the Superior Court for a determination of reasonable counsel fees as " . . . there is only one way that the appellant will desist from her persistent course of conduct," which seemingly ignores judicial fiat of both the highest court of the State and the United States.

In denying the appellee's request for counsel fees, we recognize a statutory limitation allowing counsel fees in litigation involving trust matters. We admonish the plaintiff, however, of the inherent authority of this Court to impose pecuniary sanctions upon a litigant who contumaciously ignores orders having judicial finality, and who, as here, persistently and vexatiously pursues a litigious course of conduct to the harassment of the defendants and needless usurpation of judicial process.

The entry shall be,

Appeal denied.

2George Bernard Shaw, preface to, "Androcles and the Lion."

All Justices Concurring.

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Notice: This opinion is subject to formal revision before publication in the Maine Report. Readers are requested to notify the Administrative Assistant to the Chief Justice of any typographical or other errors of form in order that corrections may be made before the print goes to press.

1 14 M.R.S.A. §5956 "Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent may have a declaration of rights or legal relations in respect thereto:

"(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

STATE OF MAINE

Law Court Portland, December 26, 1973

EDYTH L. RICE DYER, Appellant

vs.

APPEAL FROM DECREE OF JUDGE OF PROBATE RE: ESTATE OF JOHN CASSIDY

In the above entitled case brought before the Court as a Court of Law from the .... Superior Court for the County of Penobscot and now pending on the Law Docket, the said case having

been heard and maturely considered,

It is Now Ordered, That the Clerk of the Law Court now having the custody of the Law Docket enter upon said docket under said case, and certify to the Clerk of the ..... Superior Court for the County of Penobscot the following order, direction, judgment and decree of the Court in said case, to wit:

Appeal denied.

Attest: Charles B. Rodway, Jr.
Clerk of Law Court.

To Beatrice L. Park, Esq.

Clerk of Courts for the County of Penobscot

Motion for review Jan. 15, 1974

STATE OF MAINE

SUPREME JUDICIAL COURT

PENOBSCOT, ss. LAW COURT
LAW DOCKET # PEN-73-5

EDYTHE L. RICE DYER)
)
Appellant)
)
FROM THE SUPREME COURT) MOTION TO DENY MOTION
OF PROBATE) FOR REVIEW OF ALLEGED
RE: ESTATE OF) ERRORS OF LAW AND FOR
JOHN CASSIDY) SUPPLEMENTARY RELIEF

Motion of Edythe L. Rice Dyer for reconsideration in the above captioned matter is hereby denied.

Dated this 20th day of February, 1974.

For the Court

Armand A. Dufresu, Jr.
Chief Justice

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Supreme Court, U. S.
FILED
JUN 3 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1974

DOCKET NO. 73-1753

APPELLANT'S PETITION FOR WRIT OF CERTIORARI, TO APPEAL FROM THE DECREE OF THE JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY

313 A. 2nd 435, (Me., 1974)

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(Appellees)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
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BANGOR, MAINE (04401)

SUPPLEMENTARY MOTION

May 31, 1974

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1974

DOCKET NO.

APPELLANT'S PETITION FOR WRIT OF

CERTIORARI, TO APPEAL FROM THE DECREE

OF THE JUDGE OF PROBATE

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APPELLANT (pro se)
EDYTHE L. RICE DYER
% 61 STATE STREET
BANGOR, MAINE (04401)

SUPPLEMENTARY
MOTION

May 31, 1974

SUPPLEMENTARY MOTION

Under U.S.C. Rule 24, — (5), a new supplementary (intervening) case, not previously available to me, at the time of my last filing . . . became available (to me), this day, for the first time.

The Motion is made (if permissable) for leave to incorporate the following case into my recent Appeal, dated May 4, 1974.

On May 25, 1974, — The Atlantic Reporter (Maine Edition) published the case of:—

Weller vs. Sokol
318 A. 2nd 193, (Md.) 1974

It is ironically similar to my Appeal . . . which is presently before this Honorable Court.

Re:— Estate of John Cassidy
313 A. 2nd 435 (Me.) 1974
(And Murray or Sullivan 158 Me. 98)
(179 A. 2nd 307 (Me.) 1962)

Respectfully, may I say this case (Weller vs. Sokol) is "right on," -- and confirms my complaint.

For Example: —
At page 194; — (3) Wills, 498: —
The stipulated question was: —
(at page 197, — — (i),

(quote) "*Where are the stocks or stirps to be found?*"

At page 200,

(quote) " — — *that the stocks were to be found among the children who left ISSUE*".

(quote) *"The issue and descendants of such of my children as may have died leaving LAWFUL issue, — — — demonstrated that the testator was using the word 'issue' to mean 'ISSUE' OF ISSUE in an indefinitely descending line, — — — that he was importing a succession by representation from each of his children, just as if a child had died INTESTATE on the date of termination owning a share of the corpus AND leaving (lineal) DESCENDANTS SURVIVING".*

(My emphasis)

At page 199: —

Reference is made to:— "the simple fact" — that the draftsman was confined to the LEGAL situation which existed, as he knew it, at the time the will was made (1903).

Note:— It should be noted that the Cassidy Will was (also) made in (1906).

At page 199: —

(quote) " — — — *since rules of construction are applicable ONLY in the absence of an indicated intention*"; — — — "*and never to frustrate an intention.*" — — — *SURELY APPLICATION OF THE MAINE INTESTATE STATUTE, IS AN UNDENIABLE INTENTION.*

The Conclusion: —

At page 203, — — — (6): —

> Is the SAME application, of the Applicable statute of Distribution; — "as it existed in 1905." — — — IT CONFIRMS MY CONTENTION, — (and Mr. Cassidy's STIPULATION) that the laws of the State of Maine, must be PERMITED TO OPERATE, (ACCORDING TO STATUTORY LAW) — — — WHICH IS IN ESSENCE, THE DUE PROCESS, WHICH I RESPECTFULLY REQUEST TO HAVE PERFORMED.

The case of Weller vs. Sokol, proves that my Appeal is not frivolous. It requires a rational approach — which can only be resolved in a "LEGAL" MANNER.

Respectfully Submitted,

Edythe L. R. Dyer
c/o 61 State Street
Bangor, Maine

May 31, 1974

Supreme Court, U. S.
FILED
JUN 20 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1753

IN RE ESTATE OF CASSIDY
[313 A.2d 435 (Me. 1973)]

ON PETITION FOR A WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

BRIEF OF RESPONDENT IN OPPOSITION

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In the
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1753

IN RE ESTATE OF CASSIDY
[313 A.2d 435 (Me. 1973)]

ON PETITION FOR A WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

BRIEF OF RESPONDENT IN OPPOSITION

Preliminary Statement

The Petitioner in this case seeks review of the recent decision by the Maine Supreme Judicial Court sitting as the Maine Law Court, *In Re Estate of Cassidy*, 313 A.2d 435 (Me. 1973). The Maine Court notes that Petitioner's object, in 1973, was to seek "an adjudication of the same cause of action previously litigated" in *Murray* [*Murray* v. *Sullivan*, 158 Me. 98, 179 A.2d 307 (1962)]. 313 A.2d at 437. In short, the merits of the controversy were adjudicated some eleven years ago in *Murray* v. *Sullivan*, *supra*.

Both then and now the sole issue involved the construction of a Will and the jurisdiction of the State Superior Court over such matters. And the Court, in *Cassidy*, holds that its prior decision is conclusively and correctly dispositive:

> The doctrine of res judicata is determinative of the question before the Court as it relates both to the question of jurisdiction of the Superior Court and to the construction of a Will. 313 A.2d at 432.

Argument

Notwithstanding Respondent's inability to fully comprehend the Petition to this Court, Respondent submits that a prompt and correct disposition of this case may be made on the following grounds:

A. Petitioner Has Failed To Apply Within the Prescribed Time Limitations.

(1) This case was argued on October 3, 1973, and an opinion rendered and judgment entered on December 26, 1973, by the Supreme Judicial Court of Maine — 313 A.2d 435 (Me. 1973).

(2) The Petition was filed on May 22, 1974, more than ninety (90) days since the entry of judgment by the Maine Supreme Judicial Court, and the period for applying for a writ of certiorari has not been extended by a Justice of this Court.

(3) Therefore, because Petitioner has not complied with U.S.C., Title 28, Sec. 2101(c) (Rule 22 of this Court), the application for a writ of certiorari is untimely and should be denied.

B. Petitioner Has Not Presented With Any Degree of Clarity the Legal Points For Consideration by This Court.

Rule 23(4) of this Court provides that:

> The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Petitioner has submitted a 74-page document which defies comprehension. Seemingly, the only point made in the Petition is that Petitioner is dissatisfied, once more, with the decision of Maine's highest Court. No amount of study by Respondent, or this Court, however, will reveal the precise grounds for Petitioner's request for legal review. Because the Petition is the antithesis of "accuracy, brevity and clearness", the Court should deny the petition for a writ of certiorari.

C. Petitioner Raises No Question of Federal Law.

As the Maine Court has noted in its most recent disposition of this case, Petitioner's efforts represent an attempt to relitigate issues previously decided in *Murray* v. *Sullivan, supra*, 313 A.2d at 437. In *Murray*, the question presented was solely one of State Law, involving the construction of the Will of Petitioner's late grandfather, John Cassidy. Both in the context of the *Murray* proceedings and with regard to the Maine Court's recent affirmance, Petitioner has not raised any constitutional or federal questions. And, more importantly, no such questions are even remotely involved. Neither the facts nor the law have

changed over the past eleven (11) years, and the decision of the Maine Supreme Judicial Court is concise and unambiguous. Because the decision is utterly devoid of any federal or constitutional question, this Court should once again deny the Petition for review.

D. This Court Should Award Double Costs to Respondent.

On at least six prior occasions, this same Petitioner has applied to this Court for review of the same cause and each time the Petitions have been denied. The history of Petitioner's tireless and fruitless efforts is chronicled in the Maine Law Court's decision in this case, 313 A.2d at 436:

June 19, 1962	Petition for review; Supreme Judicial Court of Maine; denied
January 7, 1963	Petition for certiorari; 371 U.S. 949, 83 S. Ct. 501, 9 L.Ed. 2d 497 (1963); denied.
April 29, 1963	Motion for leave to file petition for rehearing; 373 U.S. 905, 83 S. Ct. 1288, 10 L.Ed. 2d 201 (1963); denied.
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March 8, 1965	Petition for certiorari; 380 U.S. 932, 85 S. Ct. 938, 13 L.Ed. 2d 821 (1965); denied.
April 26, 1965	Petition for rehearing; 380 U.S. 989, 85 S. Ct. 1329, 14 L.Ed. 2d 282 (1965); denied.

In addition, the Maine Court expressly warned Petitioner:

> We admonish the plaintiff, however, of the inherent authority of this Court to impose pecuniary sanctions upon a litigant who contumaciously ignores orders having judicial finality, and who, as here, persistently and vexatiously pursues a litigious course of conduct to the harassment of the defendants and needless usurpation of judicial process. 313 A.2d at 439.

In light of this admonition from Maine's highest Court as well as the clear implications of this Court's repeated responses, Respondent respectfully submits that, under Rule 57(7) of this Court, this case is an "appropriate instance" for the adjudgment of double costs.

Conclusion

For the foregoing reasons it is respectfully submitted that this Petition for a writ of certiorari should be denied.

Dated at Portland, Maine, this nineteenth day of June, 1974.

Respectfully submitted,

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Supreme Court, U. S.
FILED
OCT 8 1974
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1753

IN RE: ESTATE OF JOHN CASSIDY
313 A. 2d 435 (Me. 1973)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MAINE SUPREME JUDICIAL COURT

APPELLANT'S REPLY BRIEF

Edythe L. Bliss Dyer
Appellant (pro se)
c/o 61 State Street
Bangor, Maine (04401)
Tel. [illegible] 1974

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1753

IN RE: ESTATE OF JOHN CASSIDY
313 A. 2d 435 (Me. 1973)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MAINE SUPREME JUDICIAL COURT

APPELLANT'S REPLY BRIEF

Edythe L. Rice Dyer
Appellant (pro se)
c/o 61 State Street
Bangor, Maine (04401)
July 1, 1974

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1753

IN RE: ESTATE OF JOHN CASSIDY
313 A. 2d 435 (Me. 1973)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MAINE SUPREME JUDICIAL COURT

APPELLANT'S REPLY BRIEF

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IN BRIEF

The Respondent's attorneys, have complained that my Brief wants for CLARITY, — and it is the "antithesis of accuracy." Therefore with apologies and with over simplification, may I say: —

Everyone knows that the "SAME MANNER" of the Maine intestate statute is a "LEGAL" MANNER. And, that the applicability of the same, precludes all ancillary conjecture, or presumption; — from any and all sources.

THEREFORE: —

The Maine Law Court's presumption was void and Unconstitutional when it said: —

That, Mr. Cassidy

(Quote) — *"SHOULD" — — have viewed his childrens lineal descendants; as the DIRECT and immediate survivors of his body; —*

(Quote) — *"AS THOUGH" — — he died AFTER (4) of his (5) children, HAD SURVIVED HIM. (In fact, 43 years after he actually died.)*

THIS SPECIAL(judicial)PRIVILEGE IS OBVIOUSLY *NOT* THE SAME MANNER WHICH THE PROSPECTIVE "LEGAL EFFECT" OF THE STATUTE REQUIRES: — — AND *CONTINUES* TO REQUIRE.

***Therefore, the Probate court of original (and final) jurisdiction, has *not* been allowed (by the Law Court) to make a VALID, final distribution of the Cassidy estate.

Nor, — has the Maine Law Court validly, or LEGALLY ANSWERED the question presented to it, by the Supreme Court of Probate, in an interlocutory situation.

Although, the Maine Law Court ALLEGES, that the intestate statute:

IS APPLICABLE:

* * *

HAS BEEN APPLIED:

* * *

AND: — THAT MR. CASSIDY'S — ("SAME MANNER," — PROVIDED BY — — "THE LAWS OF THE STATE OF MAINE," — FOR THE DESCENT OF HIS — " INTESTATE PROPERTY") — HAS HAD THE "LEGAL EFFECT." . . . 313 A. 2d at p. 439)

* * *

THIS,

IS,

NOT,

TRUE . . . !

Because, (as the Law Court took void judicial notice), ***IT *WAS* INCONGRUOUS TO BY-PASS THE "PER STIRPES" CLASS.***

WHY — ?

(1) Because, I am, and always have been Mr. Cassidy's ONLY DIRECT LEGAL SURVIVOR, — IN ESSE. — AND, I CONTINUE TO BE A VALID LEGAL CLAIMANT.

(2) Because I was the only member of the direct "MEDIATE CLASS" (per stirpes) at the time of his death.

*(My mother "pre"-
deceased Mr. Cassidy; — — 144 Me. 326)

(3) Because the LAW of the (Maine Legislature's) statute, has stipulated that in Maine, all "MEDIATE" CLASS claimants may *only* take by right of REPRESENTATIONS.

IF, "the mills of justice, grind slowly but finely:" —

this Honorable Court is respectfully requested to SUPERVISE, — — a single U.S. citizen's equal right to due process, under the laws of the constitution of the State of Maine, *regardless of judicial "ipse dixit."

*(This is a Federal issue)

Only the Maine Law Court can now remedy with REMAND, (to the Probate Court) the required "LEGAL" application of the Maine intestate statute; — exactly as it admits (it should have done) in the Estate of Cassidy, case, 313 A. 2d at p. 439.

BECAUSE THE LAW COURT HAS PERMITTED (the special privilege) OF ALLOWING MR. CASSIDY TO:

(Quote) — *"as though" – legally die (43) YEARS AFTER HE ACTUALLY DIED:* — — —

THIS DOES VOID VIOLENCE TO THE MANDATE OF THE MAINE LEGISLATURE'S APPLICABLE INTESTATE STATUTE.

(Appellant's Brief at p. 38, 40.)

The Judicial Branch of Maine government is in conflict with the Legislative branch of Maine government.

(And I am denied "due process.")

In brief: — the situation may be rightly referred to as:

* * *

MAINE "JUDICIAL" GOVERNMENT
— VS —
MAINE "LEGISLATIVE" GOVERNMENT

APPELLANTS PRELIMINARY STATEMENT

The Appellant herein respectfully requests leave to bring to the attention of this Honorable Court:

(1) A reply to the Respondent's Brief dated June 19, 1974; — received by Appellant on June 21st, 1974.

(2) To show that the Respondent's Brief, is obviously in error, misleading and unnecessarily vindictive.

In brief, I shall attempt, with clarity to reply to each of the Respondents allegations in chronological order, step by step, as presented by the Respondent's.

* * *

IN ANSWER TO THE RESPONDENT'S PRELIMINARY STATEMENT

I am a pro se Appellant: who has precedurally earned the legal right to be before this Honorable Court, re: the case of, Estate of John Cassidy 313 A. 2d 435, (Me. 1973). — It may be that I have made some unintentional errors. However, this case is seriously presented and not intended to be frivolous. My briefs and the record of the case plainly prove; (and, the attorneys know very well) that I do NOT; — (as much as I would like to)

(Quote) — *". . . seek an adjudication of the same cause of action previously litigated in Murray vs Sullivan 158 Me. 98."*

(Respondent's Brief p. #1)

* * *

My Appellant's Brief, at page #23-24, clearly states:

(Quote) — *"Mrs. Dyer DOES NOT seek a new determination made by this court."*

Nor, do I seek a "new" declaratory judgment.

These presumptions are being forced upon me. They can only lead me down a "one way street," — so that the inherent issues presented, may be "by-passed." The allegation is a trap and a snare, into which I know better than to be persuaded.

(Appellant's Brief at p. 22)

* * *

Re: — RESPONDENT'S ALLEGED DOCTRINE OF "RES JUDICATA".

ONE UNDISPUTABLE FACT EXISTS: — . . . The Maine Intestate Statute IS APPLICABLE. * * * It controls the final distribution of the Cassidy Estate, IN THE PROBATE COURT.

ANCILLARY FACTS, ADMITTED BY THE MAINE LAW COURT (itself) ARE;

(1) That the statute "IS" applicable.

(2) That the "LEGAL" effect was determined by the Court

(313 A. 2d at p. 439)

(3) That, the statute's (legal effect) "MUST BE APPLIED."

(158 Me. at p. 107)

(4) That, the Law Court could give "NO HEED" to what Mr. Cassidy "MIGHT" or "SHOULD have said,"

NO ONE, (not even the Law Court) HAS DEFINED WHAT FACTS OR ANSV'ERS ARE RES JUDICATA.

IN CONTRADICTION, the Court admits; conflict of law: —

(1) That, it would be "INCONGRUOUS" to permit the statute to operate in a natural LEGAL manner.

(158 Me. at p. 107)

(2) That, the Law Court could give "NO HEED" to what Mr. Cassidy "MIGHT" or "SHOULD" have said.
(313 A. 2d at p. 439)

(3) That, Mr. Cassidy: —

(Quote) — *"SHOULD VIEW," his children's survivors as MR. CASSIDY'S DIRECT AND IMMEDIATE SURVIVORS.* — —
(158 Me. at p. 102)

— And,

(Quote) — *"the statute MUST be applied AS THOUGH (Mr. Cassidy's) DEATH OCCURRED IMMEDIATELY AFTER the death of his last surviving child. . . ."*
(158 Me. at p. 107)

* * *

The Respondent's attorneys are standing behind the Court's "catch all" words, "RES JUDICATA."

However, NO ONE, (not even the Law Court) has defined what FACTS, or LAW, is applicable as "res judicata."

A SPECIFIC PERFORMANCE (WHICH HAS BEEN BY-PASSED) IS REQUIRED.

THEREFORE: —

MY BRIEF INTENDED TO ASK: —

(1) Why can I not have judicially performed that which the INTESTATE STATUTE, LEGALLY, NATURALLY, AND "PROSPECTIVELY" REQUIRES . . .?

(2) Why can I not have;

(Quote) — . . . *"THE SAME LEGAL MANNER" — which the intestate statute provides; — exactly as Mr. Cassidy attempted to incorporate it by reference? (If*

it can be legally incorporated to operate 43 years after his death.)

Namely: as provided by:

(Quote) — *"THE LAWS OF THE STATE OF MAINE" — * * * for the (prospective) descent of intestate property, to every Maine citizen's "lineal descendents."*

(158 Me. at p. 99) (R. 350)

(3) Why would it be: —

(Quote) — "— — *incongrous to permit the statute to operate . . ."*

(Murray vs Sullivan 158 Me. at p. 107)

(4) Is the mandate of the Maine intestate statute so vague and incomplete: that it would be INCONGROUS to legally PERMIT THE PROBATE COURT to apply the "same manner" — which all other Maine citizens are required to do, PROSPECTIVELY . . .?

(5) Why was it necessary for the Law Court, to "GIVE HEED" to what Mr. Cassidy "MIGHT" or "SHOULD" have said?

Note: —

Although the Law Court admits in the Case of, — (Estate of Cassidy; 313 A. 2d at p. 439) — — THAT IT COULD GIVE *"NO"* "HEED," TO WHAT HE "MIGHT" OR "SHOULD" HAVE SAID: — IS THIS THE CONSTRUCTION WHICH THE COURT CONSIDERS TO BE RES JUDICATA: in the Probate Court?

Frankly, that which Mr. Cassidy "should" have said; —

". . . and the artificial manner, in which the Probate Court was forced to distribute the Cassidy estate; is obviously NOT LEGAL; and NOT STATUTORY DUE (probate) PROCESS.

The presumption that the Law Court had the JURISDICTION: — to legally create a NEW STATUTORY INTESTATE CLASS" (for the Legislature) — (43) years AFTER Mr. Cassidy's death: is LEGALLY IMPOSSIBLE.

If Mr. Cassidy attempted to incorporate by reference, A MANNER of the statute which did not exist when he wrote his will: — SUCH AN INCORPORATION WOULD BE, ALSO INVALID.

However, the MANNER OF the statute remained "unchanged;" — and so did the PROSPECTIVE LEGAL EFFECT, of the applicable statute.

THESE FACTS, prove that the case of the Estate of Cassidy, has knocked the (presumed) "CASE" out of Murray vs Sullivan: — proving it to be nothing more than a "LEGAL" NULLITY.

Res judicata, is not applicable to the Estate of Cassidy, for several reasons.

(1) It is the duty of the Respondent's attorneys to show; — what established facts (if any) are "res judicata."

(2) Res judicata is not applicable to judicial conjecture.

(3) The "Legal" effect of the applicable statute: — has not been permitted to operate, because its natural application would be INCONGRUOUS.

(4) Without the "Legal" operation of the statute the QUESTION presented (in Murray vs Sullivan) has not been answered.

(5) If the question presented has not been answered with "LEGAL EFFECT," — "res judicata" IS NOT APPLICABLE.

(6) Contradiction, inconclusiveness, ipse dixit, and conflicts of law, created a legal nullity.

(7) The conflict between the Legislature's statutory mandate, and the Law Court's incongruous jurisdiction, represents void construction, and a legal nullity.

(8) The conflict which continues to exist, between the unappealed ORIGINAL jurisdiction of the Probate Court; — and the Law Court's ("de novo") everything is VOID DUE PROCESS. It violates the foundation upon which all stare decisis probate law legally exists.

The recognized function of a Law Court, — is APPELLATE: — It must declare the law, (applicable to the facts presented) or remand, to a lower court.

IF, THE DOCTRINE OF "RES JUDICATA" IS APPLICABLE, IT FIRST BELONGS APPROPRIATELY TO THE ESTABLISHED (and unappealed) JURISDICTION OF THE PROBATE COURT, — OF ORIGINAL JURISDICTION.

The whole situation is so legally incongruous; that, (naturally) the Law Court desires to AGAIN "by-pass" everything; and decree the catch all words, — "res judicata."

HOWEVER JUSTICE HAS NOT BEEN DONE . . . !

SUPERVISION OF FUNDAMENTAL CONSTITUTIONAL CIVIL RIGHTS; — (IN THE INTEREST OF PUBLIC POLICY, AND BETTER LAW,) — IS INDICATED.

The case would never have "got past" the Supreme Court of Probate, except for the Agreed Facts, which were Reported to the Law Court; for LEGAL instructions to the Supreme Court of Probate, (in an interlocutory situation) — before distributing the estate.

The Law Court (itself) admitted:

(Quote) — *"They disagree ONLY as to the size of the*

share each CLAIMANT should receive."
(Murray case, at p. 100)
(Appellant's Brief at p. 29)

The record of the case, which was the foundation for the law courts jurisdiction: — (re: the "LEGAL" question of "Law") presented to the Law Court, HAD TO REPRESENT ORIGINAL (FIXED) PROBATE "RES JUDICATA;" — or, the Law Court had no jurisdiction.

The Law Court, had no jurisdiction to create or construe, "NEW" original probate process, or procedure; to aid its own jurisdiction.

Any "res judicata" (LEGAL ANSWERS), inherent to the Murray vs Sullivan case, — (if any exist) as claimed by the Respondents; had to be derived from, the Agreed Facts, as Certified to the Law Court.
(Colonial Bank vs Stevens)
(316 A. 2d 768)
(Appellant's Brief at p. 60-62)

Probate Courts and Law Courts, are creatures of statute. The Record of the case must show original jurisdiction. However no party desired, or appealed from the original Probate Court's findings; — or denied that the Probate Court had competent jurisdiction, over the parties and subject matter.

The judgment in the Murray case, is not based upon the probate facts certified. When Mr. Cassidy SHOULD have intended to LEGALLY die: — How he SHOULD have viewed the CLASSES OF HIS LINEAL DESCENDANTS (in the eyes of the Maine INTESTATE statute,) — 43 years, AFTER he actually died, — is not "LEGAL."

It is obvious, that the Maine Law Court *did*, — create a "new" legal CLASS of statutory claimants. Also, "new"

(de novo) PROBATE subject matter, new facts, and "new" (direct and immediate) PARTIES; — who were actually the ISSUE *OF* HIS "ISSUE" who had descended — " per stirpes" — from (2) statutory Classes.

(Cassidy vs Murray 144 Me. 326)
(Johnson vs Stetson 159 Me. at p. 44)

The Court admitted: —

(Quote) — *"We think — the Testator . . . SHOULD view his — lineal descendants of equal degree as a NEW CLASS."*

(Appellant Brief at p. 47-50)

Clearly; — no state law court can force a NEW statutory application of law — (upon "legal" claimants) forty three years after a Maine Citizen's death: to grant such "special privilege," for UNNAMED persons, in one class, to the detriment of another statutory class, is incongruous.

"Res Judicata," is not applicable to; — nor can it extend to, moot, hypothetical, INFERENTIAL JUDICIAL ANSWERS. * * (Reasons, by judges, are not res judicata.) * *

However, let it be remembered that NO facts, (or disagreements) existed in the Murray case; — and ONLY the Maine intestate statute could remedy the "Legal" situation.

It is this statutory ("LEGAL") remedy which I respectfully request to have performed; — as provided by; —

(Quote) — *"THE LAWS OF THE STATE OF MAINE."*

(Please see Cassidy Will, in
Murray vs Sullivan at p. 99)
Appellants Brief at p. 41)

The alleged res judicata "smoke-screen" is LEGALLY INADEQUATE, because no "legal" facts have yet been validly determined, made or answered.

If so, what are they . . .?

The Probate Courts, should again take judicial notice of the fact; — that my Appeal (Estate of John Cassidy 313 A. 2d at p. 439) represents evidence, which IMPEACHES the Murray vs Sullivan case, (for remand) because the Maine Law Court now admits; — the PROOF,

(Quote) — *"It could give NO HEED to what he (Mr. Cassidy) MIGHT or SHOULD have said."*
(Appellants Brief at p. 18-19)

I claim the Maine Law Court unconstitutionally exceeded its jurisdiction when it refused to:

(Quote) — *". . . determine the LEGAL effect of what John Cassidy said." (Supra)*

HERE, . . . THE IMMUTABLE "CONFLICY" BRINGS TWO BRANCHES OF MAINE GOVERNMENT INTO CONFLICT; — which only this Honorable Court can now regulate.

(1) The Maine Legislature's intended rights and immutable application of its fundamental INTESTATE STATUTE; — is the only "MANNER", and enforceable mandate, which is available, without prejudicial "special privilege."

(2) The Maine Law Court's judicial jurisdiction should be limited to the applicable LAW. SUPERVISION by this Honorable Court is needed to effectuate and define the (vox pox) "public policy" of the statute, as a fixed legal pattern, for all civil intestate situations.

The Respondent's attorneys have quoted, — (313 A. 2d at p. 432) by saying: —

(Quote) — *"The doctrine of res judicata is determinative of the question before the court — —".*

I ASK: —

What (determinative) "res judicata" LEGAL ANSWER (before the Court in the Murray vs Sullivan case) do the attorneys now rely upon?

Is it presumption, conjecture, or "ipse dixit" fiat . . .? What, legal fact is res judicata?

I say the LEGAL APPLICATION of the applicable statutory law; must be answered exactly as the Law Court admits, in the Estate of Cassidy case.

(313 A. 2d at p. 439)

BUT THE COURT REFUSES TO ANSWER THE (only) "LEGAL QUESTION PRESENTED. IT *DID* HOWEVER, HEED AND GIVE (ipse dixit effect) TO, HOW MR. CASSIDY; —

(Quote) — *"SHOULD VIEW HIS — LINEAL DESCENDANTS — AS A NEW CLASS —" • • • REGARDLESS OF THE PROSPECTIVE "LEGAL" REMEDY WHICH THE APPLICABLE STATUTE CAN ONLY PROVIDE. (Legal classes can not lapse.)*

(Hunt vs Hunt 37 Me. at p. 343)

(Appellants Brief at p. 23)

The word "LEGAL" takes the "CASE" out of the Murray vs Sullivan case; — and it proves my contention, that it is a "LEGAL NULLITY."

(Appellants Brief at p. 25)

Frankly; — HOW, CAN THE REQUIRED MAINE INTESTATE STATUTE BE APPLICABLE; —??

(Quote) — *"AS THOUGH" — THE CLASS (OF A CHILD, WHO, PRE-DECEASED MR. CASSIDY,*

— (WHICH IS STILL IN ESSE) IS WITHOUT A "LEGAL" RIGHT OF REPRESENTATION, DIRECTLY, per stirpes . . . ???

* * *

IF IT IS NOT "LEGAL"; —
IT IS NOT APPLICABLE.

* * *

IF IT HAS NOT BEEN APPLIED, LEGALLY — THE CASSIDY WILL, WANTS FOR FINAL DISTRIBUTION; — AND BECOMES "REALLY" (LEGALLY) INTESTATE.

* * *

THIS "LEGAL" RIGHT I CLAIM . . . BY USING THE COURT'S OWN WORDS. THIS CIVIL RIGHT "IS" THE APPLICABLE STATUTORY RIGHT; WHICH CLEARLY HAS NOT BEEN ANSWERED; OR

(Quote) — *"PERMITTED."*

* * *

Re: RESPONDENT'S AGRUMENT: — (A)

The Argument states, Petitioner has failed to apply timely.

I say: IT DEPENDS UPON HOW THE (90) DAYS ARE COUNTED.

Surely the Respondent's attorneys know better than to allege: —

(Quote) — *"This case was argued on October 3, 1973, and an opinion rendered and judgment entered on December 26, 1973, by the Supreme Judicial Court of Maine.*

The Petition was filed on May 22, 1974, more than (90) days since the entry of judgment —."
(313 A. 2d 435, Me. 1973)

***THE ATTORNEYS HAVE DELIBERATELY ATTEMPTED TO TELL THIS HONORABLE COURT A "HALF TRUTH." (Ethics; ethics, ethics . . .?)

The Fact that the attorneys would have this Honorable Court believe I have been untimely since December 26, 1973 — is just plain deceitful and vindictive.*** It is incredible.

Obviously on the last page, of my Brief to this Honorable Court, (May 4, 1974) it plainly appears that the "Dec. 26, 1973, date; — (which the attorneys allege) — was NOT the date, of the last communication to me; from the Supreme Judicial Court of Maine. * * *

A MOTION TO THE MAINE LAW COURT FOR "REVIEW" (dated Jan. 15, 1974) WAS MAILED OUT ON FEB. 1st, 1974, (with service to all parties) —. My Registered Mail indicates it was received by the Law Court Clerk on Feb. 5th, 1974. IT WAS DENIED AND FILED ON FEB. 21st, 1974, by the Law Court's Clerk.

If I recall correctly, the Court's communication was delivered to my office (about) Feb. 23rd, 1974, — it was a weekend, I saw it for the first time (about) Feb. 25th.

With simple calculation, starting (about) Feb. 25, 1974, (plus 90 days) it — brings my filing time to about May 16, 1974.

However: — In a letter to the Supreme Court's Clerk's Office, dated April 19, 1974; — I advised the Clerk, I intended to appeal the case of Estate of Cassidy, 313 A. 2d 435, (Me. 1973).

The letter said, in part: —

(Quote) — *"The purpose of this letter is to ask, if it would be in order, and timely, to:*

(1) Appeal the (probate) case of the Estate of John Cassidy (313 A. 2d 435) to the U.S. Supreme Court.

(Copy of the last filed communication for the Maine Law Court is enclosed and dated Feb. 21, 1974.)

(2) At the moment no law firm has been retained; the Motion would be pro se under U.S.C. — Rule #19-#21, (14th Amendment)."

* * *

I advised the Court that I intended to file, — with the U.S. Court on or before (April) 21st, 1974, unless an extension of time is granted.

Please note; — The date of the letter being April 19th; — obviously, the (April) 21st, 1974, date, was a typographical error; — (May 21, 1974) being the intended date.

On April 24, 1974, the U.S.C. Clerk's office acknowledged my letter, and said the Maine Law Courts judgment —,

(Quote) — " — *is of course, receivable by this court* —." . . . (Appendix, — A)

* * *

Presumably, no grounds for admonishment or intimidation exist. — The U.S. Court sent me a copy of the Court's Rules, — and I have tried to follow them.

***This Honorable Court advised me that the case WAS DOCKETED (on May 22d, 1974) and that the number assigned, was #73-1753. (All interested parties were advised of The Docket number.)

My brief was ready on May 4th, 1974. It was on it's way in the U.S. Mail postage pre-paid, etc., on May 21, 1974, — which was the best I could do with the "union printers."

(Please see p. #4, of
Appellates brief re: printers;
and the impossible hardship.

In fairness, I am sure this Honorable Court will understand that no neglect, or intentional delay exists. Because this Honorable Court may waive its own rules, I respectfully request same. Because the case is scheduled of the October Term of Court 1974; — and because of the undependability of the U.S. Mails, some time was lost. I trust the Court will allow an equitable day or two (+) or (—); — even if the attorneys do not choose to be cooperative.

* * *

In Re: RESPONDENT'S AGRUMENT, (B)

It appears that if "clarity" is of major concern to the attorneys; I can overlook with ease their attack upon my humble (pro se) Brief.

(quote) — *"the petition is the antithesis of "accuracy."*
(Respondent's Brief)

With apologies to everyone, "brevity" in this case would be desirable for everyone. But this is a NOVEL case, (possibly of first impression) and represents many facets, not easily briefed. For a pro se petitioner to tilt with a Supreme State Court armed with "ipse dixit" — requires facts, law, and many cases, to prove why "justice" should be done. A few "pro se" errors, should not be too unnatural, in a case of this comprehension.

It seems to me, that the attorneys should have devoted more time to the word "LEGAL"; in the Estate of Cassidy case, 313 A. 2d at p. #439. — "LEGAL" has a very "clear" meaning; — which POINTS OUT THE "NULLITY" in the Murray vs Sullivan case.

The Respondent's attorneys have ignored the "clarity" (and the excellent research) in the case of Weller vs Sokol, 318 A. 2d 193. (Md. 1974.) — which I submitted as new evidence (on May 31, 1974) — to this Honorable Court, (with service to all parties.)

Surely the law of the Weller-Sokol case, as researched by the Supreme Court of the State of Maryland; is "clear" enough for the Respondent's attorneys to comprehend.

(Quote) — *This Court — DETERMINED the legal effect . . ."* (313 A. 2d at p. 439)

If the Law Court would only let the LAW OF THE APPLICABLE STATUTE — take its natural and legal course: — the testator's intended remedy could be

effectuated. Without this, plain common INTESTACY is the only alternative.

There seems to be no doubt that the Probate Court would have no trouble with its (INTERLOCUTORY) question of law: —

IF THE LAW COURT HAD SAID NO MORE: — AFTER ITS OPENING STATEMENT, (in the Murray vs Sullivan case, 158 Me. at p. #100.)

(Quote) — *"The applicable statute, is —" . . . R.S. (1954) Chap. 170, Sec. 11. Sub. sec. 11.*

In plain clear words, it was the stipulated duty of the Maine Law Court to apply it in the "same manner" as the ("Laws of the State of Maine") — REQUIRED.
(Cassidy Will)

And, in the "same manner" which Mr. Cassidy knew and understood its application, when he wrote his will — in 1906; there can be no other "prospective" legal application.

And, the important point of the case is; THAT THE APPLICABLE INTESTATE STATUTE WAS CONFINED: — — — (*Weller vs Sokol*) — (*Supra*)

(a) To the "ISSUE OF, ISSUE."

(b) To the Legal situation which existed, "as he knew it, at the time the will was made."

(c) That the applicable statute, was confined to a LEGAL AND NATURAL APPLICATION.

(d) And, that (original) PROBATED FACTS, PARTIES, AND SUBJECT MATTER, WAS THE BASIS UPON WHICH THE INTESTATE STATUTE WAS APPLICABLE.

THIS CASE CLEARLY REPRESENTS THE KIND

OF (CIVIL) DUE PROCESS, TO WHICH THIS HONORABLE COURT IS RESPECTFULLY REQUESTED TO "EXCERISE ITS POWER OF SUPERVISION" — ON MY BEHALF.

(under U.S.C. Rule, #19, #30-31)
Appellant's Brief at p. 20)

The Maine Law Court (apparently) refused to answer the "LEGAL QUESTION" as originally presented, in the Murray case.

However, (in the Estate of Cassidy case at p. 439) the Court admits to the "LEGAL EFFECT."

But it holds at p. 437: —

(quote) — *"The doctrine of res judicata is determinative of the question before the Court — "*

However: — the Court admits at p. 439; —

Without the "legal" application, the Law Court (apparently) has violated the Maine Legislature's intestate intention, and the testator's intention.

THE CONFLICT BETWEEN TWO JURISDICTIONS, (or branches) OF MAINE GOVERNMENT DEPRIVES ME, OF: —

(a) My statutory "class" right.

(b) My "legal" rights.

(c) My "civil" rights, under State and Federal constitutional laws.

If, the Maine Law Court is now hesitant to (in effect) admit the Murray vs Sullivan case is a confused legal nullity: because the U.S. Supreme Court denied certiorari, re: — the Murray case: — —

IT SHOULD BE NOTED: —

That, the Respondents Brief, at p. 3, admits:

(Quote) — *In Murray, the question presented was SOLELY one of State Law . . .*"

To this I say YES-YES . . .! At last we agree on something!

Re: RESPONDENT'S AGRUMENT (C)

"FEDERAL LAW"

The Maine intestate statute is UNAMBIGUOUS, and has long standing historical stare decisis clarity, and legal significance.

Whereas the Maine Law Court admits, at p. #439,

(Quote) — *"It could give NO HEED to what he (Mr. Cassidy) MIGHT or "SHOULD" have said."*

I contend that the Law Court has abdicated. And, although the wheels of justice have been grinding on this case (exceedingly) slowly, — the time has come for "JUSTICE (UNDER STATUTORY LAW) TO BE DONE. (This is a Constitutional right, which every citizen may request. . .)

In my Motion to the Law Court (Jan. 15, 1974) at p. 25-26, — I said: —

(Quote) — *"When the reason for the law ceases, — so does the law."*

"Reason, is the soul of the law."

And the Court admits:

" — — *we are not disposed — to treat the statutory language as mere surplusage IF MEANING CAN BE GIVEN TO IT."*

(Caswell vs Kent — (158 Me. at p. 498)
(United States vs Kreider)
(61 S. Ct. 1007)
(313 U.S. 443)

A state court's "FIAT" (can make void law) and when law is "void;" it is void in infinitum.

(R. 120) (R. 125)

The legislature must be deemed to have intended to enact a valid constitutional STATUTE;-applicable to all citizens alike, WITHOUT SPECIAL PRIVILEGES TO ANYONE; — NOT EVEN A LAW COURT.

(Quote) — *Any person claiming "res judicata" estoppel, must assume the burden to prove conclusively that the issue (of fact) WAS ANSWERED.*
(146 Me. at p. 420)

NO VALID
"LEGAL" FACT
HAS EVER BEEN
ANSWERED
* (only conjecture) *

My brief:

Intends to raise fundamental Constitutional Issues.
(Appellant's Brief at p. 50 - 72)

For example: —

In the United States we are supposed to live under Constitutions: — State and Federal.

Citizens, such as myself, believe each State should have (3) three branches of government,

(1) Legislative
(2) Judicial
(3) Executive

The Judicial branch is supposed to protect, defend, and enforce the Legislatures Laws, — NOT REWRITE THEM — WITH FIAT AND IPSE DIXIT. — The whole system is interdependent, but jurisdictional. (All courts have different jurisdictions.) (28 U.S.C. Sec. 2403)

Re: RESPONDENT'S AGRUMENT (D)

"DAMAGES"

The attorneys go to great length to admonish and seek double pecuniary damages from the Appellant.

However, they might be decent enough to (also) advise this Honorable Court that, — The Supreme Judicial Court DENIED a similar claim, — (*)

(Quote) — *"WITHOUT PREJUDICE"*
(Please see Appendix)

(*) Xerox copy filed by Clerk of the Maine Law Court, on Feb. 21, 1974.

And on page, #2, of the Respondent's Brief, to the Maine Law Court, re: The Estate of Cassidy case: The respondents herein admitted:

(Quote) — *"The Appellees concede that the Appellant IS PROCEDURALLY BEFORE THE LAW COURT."*

(my emphasis)

THIS BEING TRUE: —

It seems to me that if a legal (procedural) right existed, to be before the Maine Law Court; — a legal right exists to Appeal to the Supreme Court of the United States, for "due process" and "equal rights":

— Why not?

The attorneys may totally disagree with everything I say: but as Voltair once said: —

"I would give my life to defend your right to say it."

However, I am in doubt about the attorney's defend-

ing my rights to obtain "due process."

I respectfully request this Honorable Court—NOT to deny my Appeal; but, rather to please give fair consideration with remedy in whatever manner (or remand) this Honorable Court deems appropriate.

* * *

This case, and this Reply Brief, is not intended to be vindictive toward anyone; — or to delay Justice in its endless endeavors to remedy the frailties of mankind, and better corpus juris laws.

My husband and I are not lawyers. We are only serious country people, untrained "professionally" in the science of Law. For the Record, our son, (a lawyer) has had nothing to do with either of these separate cases; — (except to read an Oral Argument before the Maine Law Court, which I prepared for him to read; — as an admissable member to the bar.)

With the exception of my husbands help and advice, I have had no Legal advice, re: this case. (Estate of Cassidy.)

IN CONCLUSION

However: — The whole controversy is the result of the surprising conjecture in the case of Murray vs Sullivan, (158 Me. 98) — which did not answer the LEGAL question presented: — or permit the Probate Court, County of Penobscot, State of Maine, to make a VALID final distribution. All distributions to date have been made UNDER PROTEST, as the probate records will show.

This DEPENDABLE "PROSPECTIVE" MANNER — is the only manner permitted, or intended, under the laws of the State of Maine. It is fixed by LAW, to be automatic, from the instant of death, and forever after. It creates only (2) CLASSES of heirs. All other claimants have to be (by law) more REMOTE.

IF, THE *REASON*, FOR THE MAINE LEGISLATURE'S INTESTATE STATUTE; — IS THE SOUL OF THE LAW: —

Nobody can deny that the Legislature's reason and INTENDED MANNER contains LIMITATIONS; — even for a "LAW" COURT.

Therefore this fixed pattern of Legislative law, continues to LEGALLY exist (and be claimable by the Appellant herein) and be applicable to ALL Maine citizens, at all times as a DEPENDABLE (CLAIMABLE) PROSPECTIVE MANNER; — automatically from the instant of death, and *forever thereafter.* — ; — —

It is therefore important public Policy for any testator; — intestator, — or class of claimants; — in all states, of the United States; — to know and be able to rely upon "the same manner" their state law, provides PROSPECTIVELY for any man's surviving CLASS — (or, CLASSES) directly; — collaterally; — or remotely.

Whereas the Maine Law Court has presumed in the Murray vs Sullivan case;

" — it would be incongruous
to PERMIT the statute to
operate — —"
IT HAS LEGALLY DENIED ME DUE
PROCESS, — AND "EQUAL PRO-
TECTION" UNDER STATE
AND FEDERAL LAWS.

* * *

HOW ELSE CAN THE LEGISLATURE'S INTENT BE (LEGALLY) APPLIED . . .?

* * *

Therefore: —

That which is not "legal" — or constitutional, prevents a VALID distribution under a final distribution, in a Probate Court.

Like a "chain-reaction," all statutory (prior) PROBATE procedure and due process, was BY-PASSED, by the Law Court.

Note: — (This "blew the fuse" all the way back to the jurisdiction of the probate court of original jurisdiction.)

It appears to the Appellant herein, that national SUPERVISION over all citizens CIVIL, and CLASS RIGHTS; is required to protect all citizens, in all states, from "ipse dixit" judicial abuse of authority.

Established national law should exist to prevent any state court, from swaying cases from "right to left," — in conflict with the fixed (stare decisis) "SAME MANNER" of law required by written (statutory) law. "Special privilege," — IS foreign to statutory law.

It is a pity, but true, that before the UNNAMED and UNCLASSIFIED "claimants herein could inherit the Cassidy Estate: — through the jurisdiction of the Probate

Court, County of Penobscot, State of Maine: —

> (Quote) — *"IN THE SAME MANNER," required by the intestate "LAWS OF THE STATE OF MAINE" (the laws had to be by-passed;) (as though Mr. Cassidy died 43 years after he actually died.) — This construction cost the interested parties approximately $550,000.00 dollars, in just lawyers fees.*
>
> Note: — Re: "SAME MANNER" — please see Cassidy Will, — R. 343, (18); and R. 350, (25); — Also Murray case, 158 Me. at p. 99: — and, Appellant's Brief at p. 62.)

The Federal issues herein may be benign; but ubiquitous. They are quid ab initio, — and cumulative. That which is wrong (or void) in the beginning never improves with time.

Whenever, one branch of the state or federal government, (Executive, Legislative, or Judicial; —) becomes sick with "IPSES DIXIT," the following expression may be applicable: —

> *"Those whom the Gods would destroy; — they first make mad with power."*

The whole system of Corpus Juris law, is full of constitutional examples of "equal protection" and "due process," CIVIL, AND CLASS RIGHTS.

Obviously, when any court attempts to rewrite the Legislature's intention; the CONFLICT of law "blows a fuse" throughout the whole system: which can only be remedied by a third SUPERVISORY power.

The Appellant is aggrieved.

The Appellant has expended considerable time, effort and expense, to bring this unique case (perhaps of first impression) to the attention of this Honorable Court. Only

this Court CAN remedy, remand, or supervise a just solution.

Perhaps my Appeal; (like Karl Menninger's new book; — (*"What Ever Became of Sin?"*) — — — best explains the need for ultimate TRUTH in all sciences.

The ever increasing "many" will have to learn the fundamental law of "just compensation."

INEVITABLE REACTION, — DEPENDABLE LAWS, — — — AND THE THERAPY OF DEPENDABLE MERCY.

Like a "gold dollar", TRUTH ALLEVIATES the need for attempted (and often prejudicial) HUMAN REMEDIES.

Respectfully, this Honorable Court is requested to take judicial notice, to grant certiorari; — and any further appropriate relief.

Respectfully submitted: —

Edythe L. R. Dyer
Appellant — pro se
c/o 61 State St.
Bangor, Maine
(04401)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

April 24, 1974

Ms. Edythe L. Dyer
Ralph Dyer, Incorporated
59-61 State Street
Bangor, Maine

Dear Ms. Dyer:

I acknowledge your letter of April 19, 1974, and remember very well the case presented to this Court in 1963. The Supreme Judicial Court of Maine sitting as the main law court is, of course, the highest state court in which a judgment might be had and such a judgment is, of course, reviewable by this Court either on appeal or on petition for writ of certiorari.

I am enclosing a copy of this Court's Rules of Procedure and return the pleadings which accompanied your letter.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

Edward C. Schade
Assistant Clerk

ECS:ljj

Enclosures

APPENDIX (B)

STATE OF MAINE

SUPREME JUDICIAL COURT

PENOBSCOT, ss. LAW COURT
LAW DOCKET # PEN-73-5

EDYTHE L. RICE DYER	)	
	)	
Appellant	)	MOTION TO DENY MOTION
	)	FOR REVIEW OF ALLEGED
FROM THE SUPREME COURT	)	ERRORS OF LAW AND FOR
OF PROBATE	)	SUPPLEMENTARY RELIEF
RE: ESTATE OF	)	
JOHN CASSIDY	)	

Motion of Roselle Cassidy Flynn, Barbara Ann Cassidy, John F. Cassidy, III and Joan Cassidy Stetson in the above captioned matter is hereby dismissed without prejudice.

Dated this 20th day of February, 1974.

For the Court

Armand A. Dufresu, Jr.
Chief Justice

State of Maine
Clerk of the Law Court
Feb. 21 1974
Received and Filed
Charles B. Rodway, Jr., Clerk

SUPREME COURT, U. S.

FILED

SEP 16 1974

MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

SUPPLEMENTARY MOTION

TO THE MAINE SUPREME JUDICIAL COURT

RE: APPEAL FROM DECREE OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY (313 A. 2nd 435, (Me. 1974)

(Attorneys for Respondents)
ROGER A. PUTNAM, ESQ.
VERRIL DANA PHILBRICK PUTNAM
& WILLIAMSON
#2 CANAL PLAZA
PORTLAND, MAINE (04112)

**

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**

ARTHUR B. LAFRANCE
246 DEERING AVE.
PORTLAND, MAINE (04102)

(RESPONDENTS)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

SEPTEMBER 10, 1974

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

SUPPLEMENTARY

MOTION

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BANGOR, MAINE (04401)

SEPTEMBER 10, 1974

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

MOTION

THIS SUPPLEMENTARY MOTION
IS FOR JUSTICE;---A
REMEDY, AND VALID
CONSTITUTIONAL
EXTRAORDINARY RELIEF.

* * *

The Weller vs Sokol, case
(318 A. 2nd 193, Md.) Atlantic Reporter.
(May 25, 1974.). . .has not been previously available for research. It is the basis for this motion, - and critical to prove statutory application of the "applicable" intestate statute.

TO THE MAINE SUPREME
JUDICIAL COURT

RE: APPEAL FROM DECREE
OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY
(313 A. 2nd 435, (Me. 1974)

APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

SEPTEMBER 6, 1974

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Strauder vs West Virginia - 100 U.S. 303
Re: Estate of John Cassidy - 313 A. 2nd 435, (1974)
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Summit vs Corthell - 132 Me. at p. 336
Johnson vs Stetson - 159 Me. at p. 44
Dielon vs Johnson - 322 A. at p. 335 (7) (Aug. 24, 1974)
Angel vs Murray - 322 A. 2nd at p. 633 (Aug. 1974)
Pomeroy, Equity Jurisprudence - 5th Ed. 1941 (Sec. 129-31)
State vs Phillips - 107 Me. at p. 249

STATUTES

U.S.C. Rule # 24, (5)
U.S.C. Rule # 19, (b)
Title 14 M.R.S.A. 5951-5963
Chapter 707-Federal Declaratory Judgments Act. M.R.S.A. Sec. 5951
Art. III, Sec. II of Me. Constitution
Art. I, Sec. I of Me. Constitution

MOTION

If it pleases this Honorable Court; and if it is permissable under U.S.C. Rule #24. (5)--- the Appellant herein respectfully requests leave to amplify and enlarge upon my hasty supplementary motion to this Court dated May 31. 1974. re:- the said Weller vs Sokol case (318 A. 2nd 193 Md.) (May 25. 1974)- Atlantic Reporter;- which was not previously available to me for research. The Weller vs Sokol case has isolated the INTESTATE AND PROBATE aspects (of the unanswered questions of law) which my Appeal raises.

The Weller vs Sokol case isolates and proves. that a question of law (concerning the application of statutory intestate law) must legally originate from within the Legislature's mandate and public policy; AT THE (true) TIME OF (any Maine citizen's) DEATH.

This conclusion is important to my (probate) Appeal:--which requires that if the statute is "applicable" that it must be "legally" applied. and without omissions.

Therefore it is the Maine Law Court's statutory duty to ANSWER the (Supreme) Probate Court's question of law; before a VALID final distributioni of the Cassidy Estate can be made in the JURISDICTION of the Probate Court. County of Penobscot. State of Maine.

U.S.C. Rule #19. (b) plainly requires the Maine Law Court to:-

> (Quote)- "decide an important state question (of intestate law) in a way (NOT) in conflict with APPLICABLE STATE--LAW---".
>
> (emphasis mine)

My Brief to this Honorable Court. dated May 4th. 1974. at page #11. plainly states:

> (Quote) "The scope of the clause cited from the XIV Amendment. that NO state shall deny any person

within its jurisdiction the equal protection of the laws,---"

State vs Mitchell
(97 Me. at p. 70.)

A positive civil right (of every person) to be FREE from any discrimination as to LEGAL rights or duties a STATE may seek to make between him and any other persons, is a Federal issue.

(Quote) "A FEDERAL SANCTION TO THE "EQUALITY OF RIGHTS" IS IMBEDDED IN THE MAINE BILL OF RIGHTS."

*Strauder vs West Virginia
100 U.S. 303
*Dyer Brief to Maine Law
Court at p. 90-91.
State vs Mitchell (supra)

THE MAINE LAW COURT IS DUTY BOUND TO "PERMIT" THE LEGAL APPLICATION (of both sentences) OF THE MAINE INTESTATE STATUTE.

(*) PERMIT (See Statute Index)
Please see the case of
Murray vs Sullivan
(158 Me. at p. 107.)

I have timely protested (ab initio) that the distribution of the Cassidy Estate has not been "legally," or validly distributed.

(*) LEGALLY
Please see the Estate
of Cassidy, case.
(313 A. 2nd 435 at p. 439.)

I am seeking a "LEGAL" REMEDY.

Obviously violence has been done to the "SAME MANNER" of the Maine intestate statute;- and also to statutory PROBATE process and procedure.

(*) "SAME MANNER"
Please see Murray vs Sullivan.
(158 Me. at p. 99.)

In the Estate of Cassidy case:---the Maine Law Court at p. #438 (6), alleges;

> (Quote) "The doctrine of res judicata not only puts an end to strife, but produces certainty as to individual rights---"

(The case cited, is
irrelevant to this case.)

It is to be noted that;- RES JUDICATA:------implies a thing decided judicially:- but when the Question of Law, has not been;- (a)- Answered; or, (b)- Legally performed;---there is nothing left but presumption or ipse dixit;---which precludes the alleged doctrine of res judicata, re: this case.

A want for JURISDICTION, over the subject matter which was "res judicata" in the probate court of original jurisdiction;- preserves original rights;---statutory rights;- LEGAL rights, and all FACTS which were presented to the Law Court by the Supreme Court of Probate. These "agreed" rights are irrevocable;- or the case was not properly before the Maine Law Court;- for law.

The parties could not waive such rights, and the Law Court could not "legally" lapse such rights;---they were res judicata in the Probate Court,---before the case of Murray vs Sullivan:- (and never appealed.)

* Anything illegal is void.
* A want for jurisdiction, is fatal.
* A Constitutional right, is supreme.
* It is impossible for "res judicata" to be applicable, to a question of law;---which remains UNANSWERED;---or answered in an "illegal" manner.

Until justice has been done,---"res judicata" must not be allowed as a "smokescreen" to hide error of law, and ipse dixit JURISDICTION.

Therefore, "justice not having been done, no "legal", or valid REMEDY now exists, as required by statutory and CONSTITUTIONAL LAW.--- Under the 14th Amendment to the Constitution of the United States, your Appellant requests the power of this Honorable Supreme Court, to REGULATE the Maine Law Court, under the "due process" and "equal right" clauses, of both the State and Federal Constitutions:---

OR, REMAND this case with instructions, to the Maine Law Court, for "legal" procedure, TO REMEDY "MY" CONTINUING LEGAL (per stirpes) CLASS RIGHT.

The Maine Law Court is duty bound to find MY statutory "stock", (MY ANCESTOR) with respect to MY legal rights, under the---

(Quote) "applicable" intestate statute.

(Murray at p. 100.)
(See Index)

The Law Court, (being a statutory court) is duty bound by its JURISDICTION, to find the ISSUE of a child (who pre-deceased) Mr. Cassidy;---and that Mr. Cassidy is MY "legal" stock,

(Quote) "--in the same manner," provided by the intestate laws of the State of Maine, (in the FIRST sentence, of the statute.)

Murray vs Sullivan
(158 Me. at p. 99.)

AND, EXCLUSIVELY UNDER:---

The Maine intestate statute (R.S. 1954, Chap. 170, Sec. I and II;---which the Law Court admits:-

(Quote) "IS" APPLICABLE.

Murray vs Sullivan
(158 Me. at p. 100.)

And, in a "LEGAL" manner which the Law Court alleges, it applied.

Re: Estate of John Cassidy
(313 A. 2nd at p. 439.)

And,---as the Weller vs Sokol case proves;- (at p. 201, (4):-re:- only children with issue:-

> "---the most compelling argument springs from the very nature of a sterpital distribution. The ISSUE and descendants of the children of (John Cassidy)* could not be determined until the termination of the trust."

*(my emphasis)

I, Edythe L. (Rice) Dyer:- (the only grandchild, who directly survived Mr. Cassidy, at the true time of his death, ---(March 25, 1918)---am the only member of the "per stirpes" class, because my mother "pre" deceased Mr. Cassidy.

"---the testator did what he could to insure that his hoidings would remain intact and ultimately pass to HIS descendants after the death of his children."

Weller at (3)--p. 200.
(only children with
issue.)

"This circumstance,---brings us unhesitatingly to the conclusion that it was the testator's intention that the STOCKS were to be found among the CHILDREN who left ISSUE and descendants surviving---".

(NOT TO NAMED INDIVIDUALS)
(Weller (3) at p. 200.)

** ARGUEMENT **

The Maine Law Court was obviously without JURISDICTION to construe how Mr. Cassidy

(Quote) "SHOULD" view;---

"ALL" of his "LINEAL" descendants,---The irrevocable, immutable, and stare decisis Legislative public policy, descends (any man's) INTESTATE property, only once.

(*) "SHOULD"
Murray vs Sullivan
(158 Me. at p. 102.)

(*) "LINEAL"
Murray vs Sullivan
(158 Me. at p. 99.)

For a Law Court to allege that the Maine Legislature's intestate statute may create a NEW statutory "CLASS," is a SPECIAL PRIVILEDGE. The Maine Legislature has never before, delegated such JURISDICTION upon a Law Court, in any intestate situation.

IT IS "LEGALLY" IMPOSSIBLE:---!

No, "future legislative method"- exists under which the intestate statute, might, or should, create a "NEW" (original) DIRECT CLASS OF SURVIVING HEIRS:--- (43) years after any citizen's death.

Never before, in the history of Maine intestate law;---has the Legislature's descent statute (when applicable)--- OMITTED the issue of a child, who pre-deceased the intestate.

Mr. Cassidy, being survived by (4) of his (5) children; is a classic example of a "per stirpes" situation:--- and a Probated fact.

NEVER, never, never, has the issue of one surviving child,

taken (4/6ths) four sixths of an intestate estate:--- while the issue of another surviving child was limited to one sixth (1/6th) of the estate. And the issue of a child who "pre"-deceased Mr. Cassidy was also limited to one sixth (1/6th) of the estate.

THINK OF IT. . . . . .!
IT IS NOT PUBLIC
POLICY;---IT IS
"LEGALLY" IMPOSSIBLE. . . .!

Although this Honorable Court cannot concern itself with Mr. Cassidy's "intention;"-- it should be obvious that his intention was to let the "law" take its legal course.

** THE LAW HAS BEEN
(IN PART) OMITTED** (See Index)

** THE QUESTION OF LAW,
REMAINS UNANSWERED.**

** THE STATUTE BEING APPLICABLE**

THE TESTATOR'S INTENTION BEING THE "SAME" AS THE LEGISLATURE'S, PRECLUDES AMBIGUITY (at any time): OR, THE ESTATE IS "REALLY" INTESTATE. ANY OTHER CONSTRUCTION, DOES VIOLENCE TO THE STATUTE, AND CHALLENGES IT VALIDITY.

** (The burden of proof, being upon the challengers.)

** BOTH SITUATIONS EFFECTUATE THE
SAME RESULT;--STATUTORY INTESTACY.**

RES JUDICATA;- which is appealed from herein,- for the same reasons I appealed from the wilful allegation that I was seeking a NEW Declaratory Judgment. All through my briefs:- I have pleaded for a "legal" answer to the question (directly) Reported to the Maine Law Court; by the Supreme Court of Probate, County of Penobscot, State of Maine.

(A LEGAL REMEDY-IS MANDATORY.)

(The Weller vs Sokol case proves it)

The force of "due process" law, (when statutory law is admitted to be applicable)- leaves the Maine Law Court NO ALTERNATIVE except to LEGALLY answer the question presented, exactly as the Weller vs Sokol case, applied the intestate statute.

In the Cassidy situation:-
The sole issue (under an agreed statement of facts) certified by the Supreme Probate Court, to the Supreme Law Court concerned:-

WHERE THE INTESTATE STATUTE COULD LEGALLY FIND, THE SOURCE OF DESCENT. .?

My probate appeal, Re: Estate of Cassidy, intends to (also) ask, WHERE the Maine Law Court can find the LEGAL JURISDICTION to apply the doctrine of res judicata. . .WITHOUT ANSWERING THE ABOVE QUESTION. . .?

Is it based upon the same "ipse dixit" which the Law Court applied, in Murray at p. 107;---where it admits:

(Quote) "---IT WOULD BE INCONGRUOUS TO PERMIT the statute to operate. . ." (?)--IF SO, the case of Murray vs Sullivan is a LEGAL NULLITY, without an applicable statute.

This judicial presumption does violence to the applicable statute. It places the court "above" the law. It has destroyed the dependable constitutional law, to which all parties agreed, (and the Court admits) "IS" APPLICABLE.

Whether any man's lineal descendants may take "per capita" or "per stirpes"- is a matter of LAW:---so fundamental that deviation therefrom is obviously VOID;- for jurisdiction and constitutionality.

The time of any man's death must be a factual epoch;

which effectuates the creation of any man's LEGAL "CLASSES" and not to be LAPSED by anyone, or any court.

Please see Hunt vs Hunt
(37 Me. at p. 343.)
(my brief)

Whereas both Mr. Cassidy and the Maine Law Court, stipulate, admit and rely upon the "APPLICABILITY" of the INTESTATE STATUTE;---I also relied upon the "legality" of the applicable statute to effectuate Mr. Cassidy's "partial" intestacy:- (delayed only by a trust,) to the (2) two classes of his children's survivors.

The Cassidy situation,- as in the Weller vs Sokol case, (3) at p. 200; and (6) at p. 202, concerns the surviving "ISSUE OF ISSUE."

The sole question in both the Weller and the Cassidy situations, concerns the question of:- "STOCKS"; determined by the Legislature's public policy;- (1) AFTER, all children without issue, were dead: (2) after all children who survived with issue, were dead: and (3) the issue of a child who did not survive Mr. Cassidy,- but was survived by issue.

The omitted "first" sentence of the applicable Maine intestate statute (re: the Cassidy Estate) is as concerned about the ISSUE of a deceased CHILD (who "pre"-deceased the ANCESTOR)---as it is (equaily) concerned about a directly surviving child.

The ISSUE of a "pre-deceased" child (as a class, or group of claimants)---is LEGALLY a "first taker" and a "future taker."

"Ad Infinitim"
Hunt vs Hunt
(37 Me. at p. 343.)
(Weller vs Sokol)

This DIRECT CLASS ISSUE which is "legally" created (only by law) as a separate direct (mediate) class;--HAD to exist at the (TRUE) TIME OF DEATH:-----regardless of any surviving children, or their issues, --or any alleged

"future" application of the statute; --or a CLASS has been judicially omitted.

It is this irrevocable (statutory) class right--- under which I am "legally" compelled to qualify;-- (WHICH HAS BEEN IGNORED by the Law Court,)---and which may be embarrassing to the Court, to REMEDY.

(*) "FIRST TAKER"
Please see: Weller vs Sokol
(3)---at p. 200.

The other claimants, (the survivors of Mr. Cassidy's surviving children) may claim the estate, ---(as stated in Weller vs. Sokol at p. 200.)

(Quote)- "as if a child had died intestate on the date of termination owning a share of the corpus and leaving descendants surviving."---***

However, obviously in my (separate) situation; NO CHILD COULD DIE.- My mother had already died, prior to my grandfather's death.---My class TAKES DIRECTLY FROM MR. CASSIDY,- (not through a child.)-----My unimpaired class, needed only to survive the Cassidy trust, in order to make my "CLASS" A DIRECT "FIRST TAKER;" in the same manner as a NAMED PERSON.

In Brief:

It would have been impossible for my mother to be the "STOCK" referred to in Weller vs Sokol, at p. 197., ---which proves the dependability of the statute's "per stirpes" manner.

Therefore: The stipulated intestate statute mandates its own operation.

The Maine Law Court was without JURISDICTION to re-write the Cassidy Well, in a manner which;--- Mr. Cassidy:-

(Quote) "SHOULD" have intended.

Or, that the statute:-

(Quote) "MUST*" be applied---" (in an artificial manner---to satisfy the Legislature). . . .!

It is the Law Court, which:-

(Quote) "THINKS"(*)--what Mr. Cassidy
(Quote) "SHOULD"(*)--have said, (43) years after his death.

* SHOULD (at p. 102.)
* THINKS (at p. 107.)

Incredible as it may sound, the Law Court also said;

(Quote)- "Mr. Cassidy did not INTEND to incorporate by reference portions of the descent statute which would serve no useful purpose,---in resolving the dilemma. . .!

Murray vs Sullivan
(158 Me. at p. 107.)

OBVIOUSLY, THE STATUTE GRANTS NO "SPECIAL" PRIVILEGES TO RESOLVE PRESUMED DILEMMAS.

Therefore:-

The Law Court's VOID' "res judicata" is, that:

(Quote) "---it would be incongruous to PERMIT the statute to operate---"

(Quote) "---so that by application of the SECOND sentence of the quoted portion of the statute---" ---no other CLASS" was permited to exist.

Murray vs Sullivan
(158 Me. at p. 100.)

OBVIOUSLY, THE FIRST SENTENCE WAS OMITTED:. . .(!)

The Weller case plainly states that:

(Quote) "---since rules of construction are applicable ONLY in the absence of an indication of intention, ---and never to frustrate an intention."

(Weller (2) at p. 199.)

Therefore:

The Appellant's right to take that share of the Cassidy Estate, as the statute "legally" requires:- when the FIRST SENTENCE IS NOT OMITTED:---CONTINUES TO BE LEGALLY CLAIMABLE, in the:

(Quote) "THE SAME MANNER"

(Murray at p. 100.)

The Appellant herein---relied upon a comlete "LEGAL" answer:---NOT a presumption, or:-

(Quote) "---as though the testator's death occurred immediately AFTER the death of his ---LAST SURVIVING CHILD."

(43 years after his death.)
(Murray at p. 107.)

OBVIOUSLY:-

By omitting the first sentence of the applicable statute, the law court eliminated not only ALL of Mr. Cassidy's directly surviving CHILDREN;- but also the ISSUE of a child, who had pre-deceased him.

THIS DID VIOLENCE, TO THE ONLY APPLICABLE ("LEGAL") MANNER OF THE STATUTE.

As Mr. Cassidy's only DIRECT "mediate" class survivor, my stock, my "per stirpe," STATUTORY RIGHT as a LEGAL CLAIMANT, continues to EXIST (exclusively) under the statute which MUST BE "LEGALLY" APPLIED

(313 A. 2nd at p. 439.)

It is not my intention to attempt to prognosticate what manner or "legal" rights Mr. Cassidy's SURVIVING CHILDREN'S SURVIVORS may claim under the applicable statute.

However:-

(1) I respectfully request my LEGAL (and civil) right (under the intestate statute)---to claim and take ONE CHILD'S SHARE OF THE CASSIDY ESTATE. (1/3 of the estate.)

OR,--

(2) I respectfully observe, that as the issue of a "pre-deceased" child,- (in esse) I have a continuing "legal" right: (as though the Law Court has neglected or "omitted" to ANSWER,- "my side of the case"-re:- my separate per stirpes class.

(3) If, the Maine Law Court wants to presume that Mr. Cassidy intended to vicariously incorporate BY REFERENCE, (the intestate statute) FOR THE FIRST TIME, (43) years after his death;--(and if the Maine Law Court, wants to "then" incorporate the statute, for THE FIRST TIME)---this fatal mistake (this error of law) "LEGALLY" VESTS THE WHOLE ESTATE, in Mr. Cassidy's ONLY DIRECT SURVIVOR:- with the same "continuing" legal right, which a direct child could "then" legally claim if "THEN" LIVING. I am alive;- I can only claim under my direct ancestor:- Mr. Cassidy,- (not as a child, - or through a child) but with the same statutory right as a child's class, "now living."(*)

(*) THIS IS WHAT THE STATUTE "NOW" REQUIRES.

Please note:-

Artificial law,- like anything else artificial;---if actually applied often creates strange and unexpected effects.

I am legally aggrieved. I have been denied a legal remedy. Justice has "lapsed" my legal class and denies me a legal REMEDY, applicable to my "continuing" statutory class.

Only this Honorable Court can REGULATE (or remand) the LAW of this case; to effectuate my "equal" rights under the State and Federal Constitutions.

As alleged in the Weller case (at p. 201) a most compelling fact is:

> THAT, distribution depended upon survivorship:- and that survivorship depended upon the fact that each CHILD had to be survived by ISSUE, to qualify as (his) LINEAL DESCENDANTS. BEING HIS ONLY DIRECT LINEAL SURVIVOR NOW LIVING; perhaps I should LEGALLY claim the WHOLE ESTATE:- (if I cannot have one child's share.)

I am a "DIRECT" SURVIVOR. I am not a child. But as the ISSUE of a child, THE MAINE LAW COURT HAD NO JURISDICTION TO LAPSE MY STATUTORY (MEDIATE) CLASS, as a surviving separate "per stirpes" class.

It is distressing to note that the Maine Law Court, has ignored and refused to legally answer the "Probate Court's legal question presented.-It has omitted the first sentence of the applicable statute;- it has construed that which Mr. Cassidy "SHOULD" have intended;- it has lapsed the "mediate" class;- it did not incorporate (by reference) the applicable statute, UNTIL (about) (55) years after the Cassidy Will was written;- it has (in effect) forced an EQUITY APPEAL upon a Probate Court;- in violation of all (unappealed) facts and subject matter,- (43 years after Mr. Cassidy's death), it created a NEW DIRECT and original class of survivors.

> With all this void law and unconstitutional procedure, the court declares all of these determinations to be untouchable, because of the doctrine of RES JUDICATA; which the Maine Law Court now alleges.
>
> (I am aggrieved.)

Please see:

> JURISDICTION:- p. 6. of my Brief to this Honorable Court dated May 4th, 1974.

Respectfully, (as in the Weller case at p. 202.) I request that the distribution of the Cassidy Estate be:-

> (Quote) "---governed by the intestacy law, as it stood (and as he understood it) when the will---took effect, at his death."---
>
> Weller vs Sokol
> (318 A. at p. 202.)
> (my emphasis)

Although the Maine Law Court denied my request for a valid final Probate distribution in Re; Estate of John Cassidy 313 A. 2nd 435 (Me. 1974): (after many years of litigation with the Law Court) it has finally admitted, (EXACTLY) THAT WHICH IT DID:- BUT REFUSES TO ALLOW. Namely, that it answered the LEGAL EFFECT of that which the Maine Intestate Statute requires, and that which Mr. Cassidy "LEGALLY" INTENDED.

On Feb. 21, 1974, the Maine Law Court said:-

> (Quote) "This court in Murray examined, discussed and determined the LEGAL effect of what John Cassidy said."
>
> "It could give NO HEED to what he (John Cassidy) "MIGHT" or "SHOULD" have said.
>
> (my emphasis)
> (313 A. 2nd at p. 439.)
> Re: Estate of John Cassidy

WHAT MORE DOES A PROBATE COURT NEED---TO EFFECTUATE A VALID FINAL (and legal) DISTRIBUTION. . . . .?

Obviously, neither Mr. Cassidy (or the LAW Court) could construe the "legal effect" of what he might or should have said. BUT THE MAINE LAW COURT DID EXACTLY THAT, WHICH IT ADMITS,- IT COULD GIVE "NO HEED."

The incongruity of it all---is that ERROR of law will not "PERMIT" (Murray, 158 Me. at p. 107) the "LEGAL EFFECT" of what Mr. Cassidy said:- to be performed with "due process."

This last communication from the Maine Law Court KNOCKS THE "CASE" out from under the construction set forth in the Murray vs Sullivan case.

It requires a remand, a remedy, regulation, or a legal ANSWER to the case presented to the Law Court by the (unappealed) Probate Court's original facts and jurisdiction.

RELIEF, under:-

> (Quote) "---such other and/or further relief as the Court deems (LEGALLY) just."
>
> *** should have been available to the Appellant herein;---under 14 M.R.S.A. 5951;-5963 and literally construed to allow consideration of the rights of parties relative to the validity or interpretation of statutes.
>
> Berry vs Daigle
> 322 A. 2nd at p. 320
> (9) (10) (Maine)
> (August 24, 1974)

There seems to be no doubt that my "legal" interest is involved:- as Berry vs Daigle (supra) (Sec. 14-16) plainly states:

> "Under declaratory procedures the plaintiff must have an established LEGAL interest."
>
> (322 A. 2nd at p. 326.)
> (August, 1974.)

And be:-

> (Quote) "--restricted only by the (class) limitations, fixed by the incorporated statute.
>
> (Murray at p. 103.)

Please note, in the Murray vs Sullivan case;

> (Quote) "they disagree only as to the size of the share each claimant should receive.
>
> (Murray 158 Me. at p. 100.)

In Berry vs Daigle, (supra) FOR DECLARATORY RELIEF:-

> (Quote) "There must be a definite assertion of LEGAL rights on the one side and a positive denial thereof on the other side."
>
> Sec. (17)(18)
> (322 A. 2nd at p. 326.)

The obvious fact that both the parties and the Law Court were exclusively restricted to the "LEGAL" INTESTATE STATUTE:- leaves no excuse or escape from void illegal construction.

The Law Court has failed to consider proved facts, and misstated law, so plainly, that the point involved is NOT ARGUABLE.

> Summit vs Corthell
> (132 Me. 336.)

> Title 14 M.R.S.A. Sec. 5951, plainly states:-
>
> --This chapter (707) shall be interpreted and construed in harmony with Federal laws re: Declaratory Judgments Act.
>
> Sec. 5953:- JURISDICTION:-plainly states,
>
> Courts, within their RESPECTIVE JURISDICTION, have power to declare RIGHTS-status and other LEGAL relations whether or not further relief is or could be claimed.
>
> Sec. 5954:---(CIVIL PROCEDURE)
>
> Any person interested-----under a WILL---whose RIGHTS status or LEGAL relations are affected by a STATUTE---may have determined any question arising UNDER the instrument, OR statute, and obtain a declaration of rights, status, or other LEGAL relations thereunder.

The KEY word- "JURISDICTION,"- limited the Maine

Law Court to effectuate my LEGAL "RIGHTS" (which are affected by a statute)-- to a declaratory performance requiring the APPLICATION of both parts of the:

(Quote) "APPLICABLE" Maine Intestate STATUTE.

WHY NOT?

Sec. 5959:-

All orders, judgements and decrees under this Chapter may be reviewed. (The Maine Law Court refuses to act.)

BUT VOID JURISDICTION IS SOMETHING ELSE---!

In plain words:-

* I promptly and TIMELY appealed the Murray vs Sullivan case.

* I have constantly and continuously appealed to every available court,-- without a REMEDY, RELIEF, OR A VALID LEGAL ANSWER.

* I have accepted all distributions to date "under protest" as the Probate Records will show.

A civil right exists under constitutional statutory law. -- LEGAL UNCERTAINTY continues (under Sec. 5958.) It now appears that only this Honorable (U.S.) Supreme Court (having regulatory power) can, or may, legally enforce the law required, in a manner (similar to Sec. 5960, and Sec. 5963) which will enforce my continuing statutory ("PER STIRPES"), ---CIVIL RIGHTS AS A SEPARATE LEGAL CLASS CLAIMANT, UNDER THE MAINE AND FEDERAL CONSTITUTIONS.

The Murray vs Sullivan case omitted all of the FIRST SENTENCE of the applicable intestate statute.

-----because of the lack of proper "CLASSES"---the Law Court admits in Dielon vs Johnson 322 A. 2nd at p. 335-(7) (Me., Aug. 24, 1974)---that:

(Quote) "---we would be rendering a purely advisory opinion, a power which the LAW COURT does not CONSTITUTIONALLY POSESS."

(my emphasis)

** IN CONCLUSION **

Obviously:

To incorporate an intestate statute for the FIRST time, (43) years after any citizen's death is LEGALLY IMPOSSIBLE, -and the case of Weller vs Sokol (supra) proves it.

To judicially presume that an intestate statute can create a new ORIGINAL CLASS of intestate claimants, (43) years after any United States citizen's death is legally impossible and violently UNCONSTITUTIONAL to the rights of other "lineal" descendants statutory rights.

The case of Johnson vs Stetson (159 Me. at p. 44) admits that Mr. Cassidy died on March 25, 1918.

The case of Murray vs Sullivan (158 Me. at p. 98) presumes that Mr. Cassidy died on June 9, 1961.

The Cassidy estate was originally probated on (April 30, 1918.)

A (legally possible) statutory application contemplates NO waiver of constitutional rights.

Proof exists:- and it is well settled, that:- Statutes are not to be read in a manner which would;

(Quote) "---result in attributing to the Legislature an intention that is contradictory of, OR inconsistant with the evident purposes of the act.---"

Angel vs Murray
(322 A. 2nd at p. 633.)
(August, 1974)

I am aggrieved:

It seems to me that mandamous or an extraordinary remedy should be applicable because:-

(1) The Maine Law Court is under the obligation imposed by LAW to perform the duty of:--APPLYING the Maine Intestate Statute, in the

(Quote) "same manner", required by the prospective manner of the---

(Quote) "laws of the State of Maine."

(Murray 158 Mr. at p. 99.)

(1) The legal duty is in respect to a required legal performance.

***

(2) It has been established (in the Estate of Cassidy case) that I have a clear LEGAL right to have the duty performed.

***

(3) That there is no other legal remedy except the continuing prospective Legislative manner of the Legislature's statute.

***

(4) The Maine Law Court's Opinion (in the Murray vs Sullivan case) does not qualify as being LEGAL; or Constitutional, or in compliance with the Legislature's delegated statutory jurisdiction over intestate property.

***

(5) The SUBJECT MATTER (and the Agreed FACTS) presented to the Law Court (by the Supreme Court of Probate)- WAS NOT IN DISPUTE.- The Law Court was without authority to exceed the

(ORIGINAL) findings as certified by the Probate Court.

Jurisdiction, concerns:
"the power of a court to render a VALID decree,"

Pomeroy, Equity
Jurisprudence:-
(5th Ed. 1941) Sec 129-31.)

(Quote) "The power which a court posesses to hear and determine cases,---is delineated by the APPLICABLE CONSTITUTIONAL AND STATUTORY PRONOUNCEMENTS."

Obviously: ***

The parties to a proceeding CANNOT confer jurisdiction upon a court to decide the ISSUES which "SHOULD" BE "DISPUTED"; (when NO FACTS are disputed.) ***

"DISPUTE"
(158 Me. at p. 100.)
"SHOULD"
(158 Me. at p. 102.)

A WANT FOR
SUBJECT MATTER IS
VOID:
AND FATAL LEGAL ERROR.

Controversies are reserved by particular laws to the exclusive jurisdictions, of the original forum;- (such as a Probate Court)-prior to a request for applicable LAW.

In brief:-

The Maine Law Court "OVERREACHED" its jurisdiction when it refused to:

(Quote) "PERMIT" the first half of the intestate statute to operate.

See Statute: (Index)
(*) PERMIT -
(158 Me. at p. 107.)

Article III, Sec. II, of the Maine Constitution declares three (3) co-ordinate (jurisdictions) of Maine Government.

Article I, Sec. I, specifies certain natural and unalienable rights of man, to be CONSTITUTIONALLY AVAILABLE.

State vs Phillips
(107 Me. at p. 249.)

THIS IS WHAT I RESPECTFULLY
REQUEST:---A (VALID) REMEDY,
AND RELIEF,----
OR, JUSTICE HAS NOT BEEN
DONE. . . . .!

If our "Watergate Era" has proved anything:---it is, that the day must never come, (in America) when one (of the three departments of Constitutional government) may illegally deny the jurisdiction of another branch of government, a STATUTOR LEGAL - REMEDY;- by taking shelter behind the doctrine of res judicata.

This Honorable Supreme Court's law, (re: President Nixon) proves that the Executive Branch of our government, does not have "RES JUDICATA", - JURISDICTION over the Judicial branch of the U.S. Government. . .(except for pardons.)

Therefore, (in my case) the Judicial Branch of Maine Government does not have "res judicata"-jurisdiction, over the Legislative Branch of Maine Government.

** CONSTITUTIONAL LAW IS INVOLVED**

THE APPELLANT HEREIN IS
AS DISILLUSIONED,--(WITH JUSTICE)
AS THE AMERICANS "PUBLIC"
WOULD HAVE BEEN;--

IF THE PRESIDENT HAD
DECLARED "EXECUTIVE
PRIVILEGE",--TO BE,-"RES
JUDICATA,"----
(and got away with it)--!

Title, 4 M.R.S.A. Sec. 401;- (5) plainly states Supreme Court of Probate may "timely" have appelate jurisdiction:- BUT CANNOT ENTERTAIN ANNULMENT OF ORIGINAL JURISDICTION.

Kimball Petitioner
142 Me. 182
49 A. 2nd 70

O'Grady vs Patridge
319 A. 2nd 115,- (June, 1974) (Me.)
(3),---appellate court had NO timely jurisdiction over ORIGINAL probate procedure.

THE MAINE COURTS HAVE OMITTED THE ISSUE OF A CHILD WHO PRE-DECEASED MR. CASSIDY:---BY NOT PERMITTING THE FIRST HALF OF THE APPLICABLE INTESTATE STATUTE TO OPERATE.

PREJUDICIAL
UNCONSTITUTIONAL
IN JUSTICE EXISTS.

I, AND MY HEIRS,- WILL ALWAYS CLAIM THAT WHICH THE APPLICABLE STATUTE PERMITTED on March 25, 1918:- and CONTINUED (unchanged) TO PERMIT on June 9, 1961:- and on Sept. 6th, 1974;- and ad infinitim:- as the Weller vs Sokol case proves.

That which was wrong in the beginning; never improves with time.

Respectfully submitted:

Edythe L. (Rice) Dyer
c/o 61 State Street
Bangor, Maine (04401)

September 6, 1974

The applicable statute, incorporated by reference into the Cassidy will, is R.S., 1954, Chap. 170, Sec. 1, Subsec. II which provides:

"II. The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation.

"OMITTED" NOT PERMITTED BY COURT

If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation."

USED

**Mr. Cassidy died March 25, 1918— (not) on June 9, 1961.

SUPREME COURT, U. S.
FILED
NOV 8 1974
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

DOCKET NO. 73-1753

MOTION FOR REVIEW

TO THE MAINE SUPREME
JUDICIAL COURT

RE: APPEAL FROM DECREE
OF JUDGE OF PROBATE

RE: ESTATE OF JOHN CASSIDY
(313 A.2nd 435, (Me. 1974)

(Attorneys for Respondents)
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PORTLAND, MAINE (?4102)

(RESPONDENTS)
JOHN F. CASSIDY, III,
BARBARA ANN CASSIDY,
ROSELLE CASSIDY FLYNN,
JOAN CASSIDY STETSON,

APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

NOVEMBER 4, 1974

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

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(Attorneys for Respondents)
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APPELLANT (pro se)
EDYTHE L. RICE DYER
c/o 61 STATE STREET
BANGOR, MAINE (04401)

NOVEMBER 4, 1974

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

MOTION FOR REVIEW

Respectfully, the petitioner herein requests (under Rule #58, U.S.C.) that this Honorable Court review my Appeal, as intended under U.S.C. Rules #19-30-31, #15(E) and #33(B) as made by Edythe L. Rice Dyer, Appellant (pro se) under U.S.C. Docket #73-1753;- October Term, 1974. (Denial notice received by Appellant Oct. 18, 1974.)

A fundamental Constitutional right exists, to have statutory law performed.

As stated on page 28, of my September 10, 1974 Supplementary Motion, the Supreme Judicial Court of Maine actually admitted in Murray vs Sullivan 158 Me. 98, (at page 100) that:-

"The applicable statute, incorporated by reference into the Cassidy will, is R.S., 1954, Chap. 170, Sec. 1, Subsec. II which provides:

"II. The remainder of which he dies seized, and if no widow or widower, the whole shall descend in equal shares to his children, and to the lawful issue of a deceased child by right of representation."

"OMITTED" NOT PERMITTED BY COURT

"If no child is living at the time of his death, to all his lineal descendants; equally, if all are of the same degree of kindred; if not, according to the right of representation."

USED

Note:-**Mr. Cassidy died March 25, 1918-(not) on June 9, 1961.

In Estate of John Cassidy 313 A. 2nd 435, (1974), the Maine Law Court admits:

(Quote) "This court in Murray vs Sullivan examined, discussed, and determined the LEGAL effect of what John Cassidy said."

"It could give NO HEED to what he (John Cassidy) MIGHT or SHOULD have said."

(My emphasis)
(313 A. 2nd at page 439.)

BUT THIS HAS NOT BEEN DONE. THE QUESTION OF LAW PRESENTED BY A MAINE PROBATE COURT, TO THE MAINE LAW COURT, HAS NOT BEEN ANSWERED;- AS REQUIRED BY THE STATE AND FEDERAL CONSTITUTIONS; AS THE MISSING SENTENCE IN THE "APPLICABLE" STATUTE GRAPHICALLY PROVES,

To deny Docket #73-1753, represents a sad day for the "law of the land."

Frankly, the statutory law, of the State of Maine has been violated. The Judicial Branch of Maine Government has changed the "same manner" of the Maine (intestate) descent statute to do something which the Legislative Branch of Maine Government does NOT provide. **(IT IS ILLEGAL, -quid ab initio;- and "LEGALLY" mallum prohibitum)**

The Maine Law Court, "by-passed" all prior probate (certified) FACTS and original procedural jurisdiction. It created a fictitious DEATH DATE;- to which it forced only HALF of the Maine Legislature's descent statute to be "Applicable."

(Quote) "THE STATUTE MUST BE APPLIED AS THOUGH * * * *death occurred immediately after the death of his last surviving child,"---

Murray vs Sullivan
158 Me. at p. 107.
(179 A. 2nd 307) (1962)

This is how;- the Maine Court said the deceased,- (with a NEW DEATH DATE)---

(Quote) "SHOULD VIEW HIS OWN LINEAL DESCENDANTS."

(158 M. at p. 102.)

Namely, as a NEW CLASS of direct and immediate survivors;- excluding the (2) classes of his "per capita" and "per stirpes" CHILDREN;- four (4) of which LEGALLY survived him, - and one (1), (my mother) "pre-deceased him.

LEGAL classes;- once legally fixed by statutory law, cannot legally lapse.

IN BRIEF:-

THE JUDICIAL BRANCH OF MAINE GOVERNMENT HAS DONE VIOLENCE TO THE MAINE LEGISLATURE'S "APPLICABLE" INTESTATE STATUTE,---BY REFUSING TO:

(Quote) "PERMIT" (*) THE FIRST SENTENCE TO APPLY.

(*) "PERMIT"=Murray vs Sullivan 158 Me. at p. 107.

However, regardless of everything; a valid final probate decree and distribution of this estate is LEGALLY impossible (and unconstitutional) until both sentences of the Maine intestate statute are "permitted" to operate. (OR, "actual" intestacy exists.)

I have a "legal" right to claim that share of my grandfather's estate, which the Maine Legislature "legally" permits (and requires) me to claim as a claimant, "per stirpes," by legal right of REPRESENTATION. *(I have no other legal alternative, or remedy.)

I am being legally forced to be a "per capita" claimant (because Mr. Cassidy "judicially" died on June 9, 1961;---instead of when he actually died on March 25, 1918. This VIOLENCE is not true. It is contrary to intestate laws of the State of Maine;---and contrary to "due process" and "equal protection" under the State and Federal Constitutions.

I fully realize that the Supreme Court has a very busy docket, and that my case is not of great national consequence. However, (by example) if statutory law no longer has meaning;- if one branch of government can by-pass another branch;---JUSTICE and LAW, in this country will not long survive.

All I really wanted the U.S. Court to do, was to REMAND the CASE back to the Maine Law Court; with instructions to permit both sentences of the:- "APPLICABLE" statute to operate.

The Maine Law Court is duty bound, to;---"tell it like it is;"---not,- as the Law Court presumes Mr. Cassidy

(Quote) "SHOULD",---HAVE SAID.

OBVIOUSLY:- (It could give "NO HEED" to what he "SHOULD" have said)

(313 A. 2nd at p. 439.)

Karl Menninger's recent book,- (What Ever Became of Sin?"-plainly proves that it is not necessary, to "prove" what was wrong,---when it becomes obvious.

The "judicial fire escape," relied upon by the Maine Court and labeled "res judicata" is useless; when that which is wrong, is obvious. A murderer is quickly releaved from jail (sans, res judicata) when he is obviously innocent.

Please see my May 4th, 1974
Brief to U.S.C. at p.# 51
* (The Court had no allowable
jurisdiction to create
a new death date as a probated fact.)

It is obvious, that half of the applicable (Maine intestate) statute is missing. WHY?. . .I want it "told like it is---."

A $300,000.00 accomplishment fee, was paid to the opponent attorneys. Please see pages #34-35 of my May 4, 1974 Brief to the U.S. Supreme Court.

(Walker vs Flynn, Docket
#6484 Penobscot County
Superior Court (1966)

It may not be unlawful to make,- or take, a $300,000.00 accomplishment fee;- if nobody can prove what it was supposed to accomplish;- *in addition to all standard fees and charges. which all parties AGREED were to be paid by the Probate Court. However, the accomplishment fee- was unknown to the Probate Court and the other parties who entered into the Agreed Statement.

All I can prove is that half of the (Quote) "Applicable,"--Maine intestate statute IS MISSING;- and I refuse to play the game until the whole "APPLICABLE" statute,---IS APPLICABLE. (There can be no other "legal" alternative,---or valid probate remedy.)

By denying my ("probate") Appeal for a VALID FINAL DISTRIBUTION OF THIS ESTATE;---the Supreme Court of the United States is (in essence) allowing injustice to go unnoticed, and in effect condones it.

For the record, I, my heirs, and assigns, continue to be aggrieved; because my Constitutional questions have not been answered, and justice has not been done.

In the Atlantic Digest (Me. Ed., Oct. 12, 1974) at p. 646, (8-9)---the Rhode Island Supreme Court advised:-

(Quote) We recognize that what is for the public good---the General Assembly is vested with a large discretion;- that its determinations are entitled to full consideration; and that COURTS ARE NOT warranted in setting aside such an enactment unless it is clearly evasive of, or contrary to constitutional prohibitions.

* * *

IF THE MAINE INTESTATE STATUTE MUST BE APPLIED,- HOW CAN ONE SENTENCE, (and one "class") BE "LEGALLY" SET-ASIDE..? * * *

The fact finding power of the original Probate Court, once having established the certified FACTS,- as presented to the Law Court,- (and applicable to the applicable descent statute) MUST STAND, or be remanded back to the lower court for "applicable" FACTS:---with a right to appeal, in a probate court.

A jurisdictional step is missing. A procedural LEGAL nullity exists. REGULATION by the Supreme Court is required.

The identification of a TRUE FACT and the mandate of a fundamental statutory right, is explicitly guaranteed by the U.S. Constitution (Amend. 14)--- A clear, well defined "legal" right is mine to claim under MANDAMUS and EXTRAORDINARY WRIT.

(A denial, is not appropriate.)

This motion is intended to be strictly a legal matter, with malace toward no one;- made in good faith and not for delay.

I therefore, respectfully request that these matters (by legal right) be Reviewed by this Honorable Court, so that JUSTICE may be done.

Respectfully Submitted,

Edythe L. R. Dyer
c/o 61 State Street
Bangor, Maine (04401)
(pro se)

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

October 15, 1974

Mrs. Edythe L. Rice Dyer
c/o 61 State St.
Bangor, Me. 04401

RE: IN THE MATTER OF THE ESTATE OF
JOHN CASSIDY, EDYTHE L. RICE DYER
73-1753

Dear Mrs. Dyer:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari and for other relief is denied.

Very truly yours,

MICHAEL RODAK, JR., Clerk
By

Helen Taylor, (Mrs.)
Assistant Clerk

Received :-
Oct. 18, 1974

Arthur B. LaFrance, Esq.
246 Deering Ave.
Portland, Me. 04102

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

WASHINGTON, D.C. 20543

October 25, 1974

Mrs. Edythe L. R. Dyer
c/o 61 State Street
Bangor, Maine

Re: In the Matter of the
Estate of John Cassidy,
Edythe L. Rice Dyer
No. 73-1753

Dear Mrs. Dyer:

You have 25 days from the date of this Court's denial of your petition in which to file a petition for rehearing.

I direct your attention to Rule 58 and also advise that forty (40) printed copies of the petition for rehearing must be filed.

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

E. C. Schade
Assistant

ECS/th